# SUPREME COURT OF THE UNITED STATES.

## No. 416.

JAMES T. SOUTTER AND SHEPHERD KNAPP, SURVIVORS, &c., APPELLANTS,

vs.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY.

AND

## No. 417.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY, APPELLANTS,

vs.

THE MILWAUKEE AND ST. PAUL RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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1 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, begun and held according to law, on the second Monday of April, A. D. 1866, at the city of Milwaukee, in said district of Wisconsin, present and presiding Hon. Sam'l F. Miller, associate justice of the Supreme Court of the United States, and the Hon. Andrew G. Miller, district judge. On the seventh day of the term, to wit, on the sixteenth day of April, A. D. 1866, the following proceedings were had, to wit:

*Supplemental bill.*

THE MILWAUKEE AND MINNESOTA RAILROAD Company
*vs.*
JAMES T. SOUTTER and SHEPHERD KNAPP, survivors of Green C. Bronson, deceased, William Wallace Pratt, William White, and the Milwaukee and St. Paul Railway Company.

*Cross bill.*

JAMES T. SOUTTER and SHEPHERD KNAPP, survivors of Green C. Bronson,
*vs.*
THE MILWAUKEE AND MINNESOTA RAILROAD Company.

Be it remembered that heretofore, to wit, on the eleventh day of April, A. D. 1865, came the complainant (in the supplemental bill) and filed the mandate of the Supreme Court of the United States in the words and figures following, to wit:

2 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Wisconsin, greeting:

Whereas, lately in the circuit court of the United States for the district of Wisconsin before you, or some of you, in a cause between the Milwaukee and Minnesota Railroad Company, complainant, and James T. Soutter and Shepherd Knapp, survivors of Green C. Bronson, deceased, and William Wallace Pratt, William White, and the Milwaukee and St. Paul Railway Company, defendants, the decree of the said circuit court was in the following words, viz:

"On the 20th day of September, 1864, the demurrer of the defendant, the Milwaukee and St. Paul Railway Company, to the bill of

complaint in this cause came on to be heard, and was argued by counsel, and the argument not being concluded, the same was adjourned until to-morrow morning.

"And afterwards, on the 21st day of September, 1864, came the parties, by their counsel, and the argument of the demurrer in this cause was resumed, and the same being concluded, the court took the same under advisement.

"And afterwards, on the 29th day of September, 1864, came the parties, by their counsel, and the Milwaukee and Minnesota Railroad Company ask leave to attach to the supplemental bill of complaint in this cause the order of said district court in the western division case, made on the 7th day of May, A. D. 1863, marked schedule A, and that it be taken and considered as a part of said supplemental bill, it is ordered by the court that said amendment to said supplement bill be, and is hereby, made previous to the determination of the demurrer thereto.

"Whereupon the demurrer to said supplemental bill thus amended came on to be heard, and was argued by counsel, and on consideration thereof it is ordered by the court that said demurrer be, and the same is hereby, sustained. And it is further ordered, adjudged, and decreed by the said court that said supplemental bill be, and the same is hereby, dismissed at the cost of the complainant," as by the
3. inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and sixty-four, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel, on consideration whereof, it is now here ordered, adjudged, and decreed by this court that the order sustaining the demurrer to the complainants' bill, and the decree of the said circuit court in this cause dismissing the bill be, and the same are hereby, reversed with costs, and that the said complainants, the Milwaukee and Minnesota Railroad Company, recover against the said defendants two hundred and fifty-two dollars and twenty-four cents for their costs therein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court for further proceedings to be had therein in conformity to the opinion of this court.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity to the opinion and decree of this court, as according to right and justice, and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-four.

Costs of complainant:

| | |
|---|---|
| Clerk | $232 24 |
| Attorney | 20 00 |
| | 252 24 |

Taxed by—

D. W. MIDDLETON,
*Clerk of the Supreme Court of the United States.*

APRIL 14, 1865.

This day came the complainant, by its counsel, and filed its motion for an injunction, with an admission of service of notice of said motion and copy of bill of complaint in this cause indorsed as follows, to wit:

4 Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

*Suit by supplemental bill.*

THE MILWAUKEE AND MINNESOTA RAILROAD Company
*vs.*
JAMES T. SOUTTER and SHEPHERD KNAPP, survivors, &c.,
*vs.*
THE MILWAUKEE AND ST. PAUL RAILWAY Company and others.

To Messrs. Cary & Pratt, solicitors for the Milwaukee and St. Paul Railway Company:

GENTS: Please take notice that on the 11th day of April, A. D. 1865, at 9 o'clock a. m. of that day, or as soon thereafter as counsel can be heard, at the room of the judges of said circuit court in the United States post office building, in the city of Milwaukee, in said district, the complainant in this suit, the Milwaukee and Minnesota Railroad Company, will apply to Hon. Samuel F. Miller, one of the justices of the Supreme Court of the United States, for an order in this cause, directing a writ of injunction to be issued out of, and under the seal of said circuit court, to be directed to the Milwaukee and St. Paul Railway Company, its officers, employees, agents, solicitors, and counsel, and each and every of them, with apt and proper words in that behalf, and in due form of law, pending the proceedings in this cause, and until the further order of the court in the premises, from using or running any portion of said rolling stock which was on the La Crosse and Milwaukee railroad when the said final decree was made in said western division foreclosure suit mentioned in the supplemental bill of complaint in this cause, except the said forty box cars specially mentioned and described by their re-

spective numbers in the said decree last mentioned, on the said western division, so called, mentioned in the bill of complaint in this cause, or on the said competing line of railroad described in said supplemental bill, from Milwaukee by way of Watertown to Portage City, and from intermeddling in any way therewith; or, in case the said Hon. Samuel F. Miller shall be of opinion that the said complainant is not entitled to said writ of injunction to the effect
5 aforesaid, then application will then and there be made to said Hon. Samuel F. Miller, justice of the Supreme Court of the United States as aforesaid, for an order directing a writ of injunction to be issued as aforesaid, to be directed as aforesaid, restraining and enjoining the said Milwaukee and St. Paul Railway Company, its officers, directors, agents, employees, solicitors, and counsel from using any portion of the rolling stock that was on the La Crosse and Milwaukee railroad when the receiver was appointed as stated in the said supplemental bill, except the said forty box cars specially mentioned and described by their numbers in said western division foreclosure decree mentioned in said supplemental bill, upon the said western division, so-called, described in said bill, or upon the said competing line of railroad mentioned in said bill, from Milwaukee by way of Watertown to Portage City, or intermeddling therewith for any purpose whatever, or for such other order, injunction, or relief as the nature of the complainants' case may require, and as shall be agreeable to equity and good conscience.

Each and all of these applications will be founded upon the record in this cause, including all affidavits and papers filed therein, and upon the opinion and mandate of the Supreme Court of the United States on appeal in this cause, copies of which will be served upon you hereafter, and upon affidavits that will be served on you on or before the first Monday of April, A. D. 1865.

Dated Milwaukee, March 20th, 1865.

MATT. H. CARPENTER,
*Sol. for Complainant.*

APRIL 17, 1865.

This day came the parties, by their counsel, and the mandate of the Supreme Court, and its opinion having been filed in this court, on motion of the complainant, it is ordered by the court that the order or decree in this cause sustaining the demurrer to the bill of complaint in this cause be, and hereby is, vacated, and that the said Milwaukee and St. Paul Railway Company answer the same on or before the first Monday of May next, or said bill may be taken as confessed against said company. And it it further ordered that the said Milwaukee and Minnesota Railroad Company do have and recover of the said Milwaukee and St. Paul Railway Company the sum of two hun-
6 dred and sixty-two dollars and twenty-four cents, being costs in the Supreme Court, and if not paid in ten days, have execution therefor.

MAY 1, 1865.

This day came the complainant, by its counsel, and filed an amendment to its bill of complaint, by stipulation indorsed thereon, as follows, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE AND MINNESOTA RAILROAD Company
*vs.*
THE MILWAUKEE AND ST. PAUL RAILWAY Company and others.

Amend the bill of complaint in this cause by inserting at the end of the stating part of said bill of complaint the following, that is to say:

"And your orator, upon information and belief, further shows that the said Milwaukee and St. Paul Railway Company is insolvent; and that any decree which may be rendered in favor of your orator in this cause for money, for the use of said rolling stock, will be worthless, and cannot be made or collected."

MATT. H. CARPENTER,
*Sol. for Complainant.*

Indorsed as follows:

"It is hereby stipulated that the within amendment may be considered as incorporated into and form a part of the bill of complaint in this action; and that the defendants have till the 15th day of May next to answer said bill of complaint thus amended. Service of copy of amendment or bill as amended being hereby waived."

Dated April 24, 1865.

MATT. H. CARPENTER,
*Sol. for Compl't.*
CARY & PRATT,
*Sols. for Def'ts.*

MAY 24, 1865.

This day came the Milwaukee and St. Paul Railway Company, by its solicitors, Messrs. Cary & Pratt, and filed its separate answer as follows, to wit:

7 Circuit court of the United States for the district of Wisconsin, in chancery.

The separate answer of the Milwaukee & St. Paul Railway Company, one of the defendants to the bill of complaint of the Milwaukee & Minnesota Railroad Company against the Milwaukee and St. Paul Railway Company, James T. Soutter and Shepard Knapp, survivors of Greene C. Bronson, deceased, Wallace Pratt and William H. White, defendants.

This defendant, now and at all times saving and reserving to itself all manner of benefit and advantage of exception to the many errors

and insufficiencies in the said bill of complaint contained, for answer thereto or unto so much and such parts thereof as it is advised it is material or necessary for it to make answer unto, answering, denies that the La Crosse & Milwaukee Railroad Company was a corporation existing under the laws of the State of Wisconsin, from the first day of January, 1850, until the twenty-first day of May, A. D. 1860; but admits and says it was such corporation from and after some time in the year 1852, and as this defendant is informed and believes, still is such corporation. That this defendant has been informed and believes that on the 21st day of June, 1858, said La Crosse & Milwaukee Company was indebted in a large amount of floating debt, accumulated for the purposes mentioned in said bill, and other purposes, and that on or about the day and year last aforesaid, did make, sign, seal, execute, and perfect, ready to be negotiated, sold, delivered, and transferred, the bonds as mentioned in said bill of complaint, and that to secure the payment of said bonds, said company executed the mortgages named in said bill of complaint, as Exhibits No. 1 and 2 of said bill.

That, as this defendant is informed and believes, said La Crosse & Milwaukee Railroad Company afterwards issued a portion of said bonds; that of the bonds so issued, the sum of about one hundred and sixty thousand dollars in nominal value was paid out by said company to the creditors thereof, and was received in payment by said creditors for the debts owing them by said company. That thirty thousand dollars in nominal value of said bonds were delivered by said La Crosse & Milwaukee Railroad Company to the Watertown and Baraboo Valley Railroad Company, for the repurchase of the line for the Land Grant road from Madison to Portage City, and that ten thousand dollars, nominal value thereof, were expended in building a railroad from Fox Lake to the depot on the La Crosse & Milwaukee railroad, near said Fox Lake. That said La Crosse & Milwaukee Railroad Company, by resolution of its board of directors, placed five hundred and fifty thousand dollars, in nominal value of said bonds, in the hands of Stoddard Judd, in trust, for the benefit of the farm mortgage stockholders in said company, to be delivered on certain conditions, to be complied with by said farm mortgage stockholders on or before the 1st day of May, 1860. That said conditions were never assented to or complied with, nor were said bonds ever delivered to them by said Judd.

That four hundred thousand dollars, in nominal value of said bonds, were by the officers of said company delivered to said Sebah Chamberlain, as collateral security for the payment of a note of said company to said Chamberlain, for twenty thousand dollars; that the directors and officers of said La Crosse & Milwaukee Railroad Company purposely failed to pay said note, with the view of having said bonds sold, and becoming themselves the purchasers thereof; that after the maturity of said note, said Chmaberlain placed the same in the hands of Greenleaf & Meigs, brokers of New York, together with said bonds for collection; that said Meigs and Greenleaf thereupon notified said company, and its officers and directors, that said bonds would be sold

to pay said note if not paid by them; that afterwards and in the month of January, 1859, said Meigs & Greenleaf pretended to sell said bonds at private sale to said directors or to their friends, for the benefit and by the procurement of said directors, at the sum of five cents on the dollar, and that in fact said bonds were divided up and parcelled out by said directors among themselves, at said rate of five cents on the dollar, and that they were never in any other manner disposed of or issued by said company. That three hundred and ten thousand dollars, in nominal value of said bonds, were in December, 1858, placed in the hands of Henry G. Gilbert, William Gould, William Watson, and Seth R. Foster, for the loan of about fifteen thousand dollars, and as security therefor, and that said bonds were afterwards divided up among the parties last named, without any sale or further agreement with said railroad company. That one hundred and three thousand dollars in nominal value of said bonds were placed in the hands of Russell Sage by said La Crosse and Milwaukee Railroad Company, to be used by him in payment of the debts of said company, but that they were not so used, but were subsequently returned by said Sage to said La Crosse and Milwaukee Railroad Company, and cancelled. And that the further sum of about four hundred and thirty-seven thousand dollars of said bonds, as this defendant is informed and believes, were disposed of by said directors and officers of said La Crosse road among themselves and their friends, after the first of January, in the year 1859, and many of them after the commencement of said foreclosure, at merely nominal amounts, not exceeding five cents on the dollar, and in fraud of the rights of the creditors and stockholders of said La Crosse & Milwaukee Railroad Company.

And so this defendant says, that but about two hundred thousand dollars of said bonds were ever sold or used by said company in the payment of its debts, the purchase of the line of the Land Grant road from Madison to Portage City, and in building the Fox Lake branch road. That the further sum of eleven hundred and
8 forty-seven thousand dollars was never issued and put in circulation or sold by said company, except that certain officers of said company pretended to pledge them, as above stated, at the rate of about five cents on the dollar, which hypothecation this defendant believes to have been fraudulent and with a view of appropriating the same to the officers and directors of said company, which was afterwards accomplished as above set forth, and that the remaining six hundred and fifty-three thousand dollars of said bonds were never issued by said company, or put in circulation in any manner whatever; but that five hundred and fifty thousand dollars were placed in the hands of Stoddard Judd, and one hundred and three thousand dollars in the hands of Russell Sage, to be used by them as aforesaid on certain contingencies which never happened.

And this defendant, further answering on information and belief, says that said bonds never passed into circulation in the bond or stock markets of the United States, in the city of New York or elsewhere, and that they are not now held by bona fide purchasers or owners,

that said bonds, except those issued to the actual creditors of said company in payment of their said debts, were never in credit in any bond or stock market, but have always been owned and controlled by parties who took them with full knowledge of the fraudulent manner in which they were originally disposed of by the officers of the said company, and that they have never been in the hands of bona fide purchasers or owners thereof. That one Albert C. Gunnison was one of the directors of the La Crosse & Milwaukee Railroad Company at the time of making said Barnes's mortgage, and the disposition of said bonds; and that he, together with Alfred Noxon and Wm. A. Guest, were the executive committee of said company, and were charged with the duty of disposing of said bonds, and disposed of them as aforesaid; and that said Gunnison is now, and for the past four years has been, a director of said Milwaukee & Minnesota Railroad Company, and now or lately the vice president thereof, and that said Gunnison does now and for the past four years has owned or controlled a majority of all the stock of the said pretended Milwaukee & Minnesota Railroad Company. And that the said Gunnison and his associates who participated in or were cognizant of the aforesaid fraudulent acts and doings of the said directors and officers of the said La Crosse & Milwaukee Railroad Company now own, control, and have the management of the said pretended Milwaukee & Minnesota Railroad Company, and are seeking, under that name, to carry out and consummate the aforesaid fraudulent acts and practices of the aforesaid directors and officers of the said La Crosse & Milwaukee Railroad Company.

This defendant admits that no interest was paid on said bonds, and that on or about the 24th day of February, 1859, the said William Barnes caused a notice, signed by him, as trustee, to be published in two newspapers published in the city of New York, and one published in the city of Milwaukee, setting forth the making of said mortgage and supplemental mortgage, the record thereof, the description of the property and premises conveyed by said mortgage, and further setting forth that the interest which became due on the first day of January, 1859, upon all the bonds issued by said company, secured by the said mortgages, amounted to the sum of about seventy thousand dollars, and that it was not paid by said company when it became due, and that said company having made default in such payment for the space of more than fifteen days, that the holders of said outstanding bonds, amounting in the aggregate to the sum of over one hundred thousand dollars, had duly requested in writing, in compliance with said mortgage, that said Barnes should proceed to sell said mortgaged premises, and convey the same; therefore, notice was thereby given, that in pursuance of the authority vested in said Barnes by said mortgage deeds, he, said Barnes, would expose for sale at auction to the highest bidder, in conformity to law, at the court-house, in the city of Milwaukee, in said State, on the 26th day of March, A. D. 1859, at 12 o'clock m. of that day, all and singular the said railroad and real, personal, and other property of whatever nature, covered by said trust deeds, together with all said rights,

privileges, and franchises appertaining thereto, and also all the corporate and other rights, privileges, and franchises of said La Crosse & Milwaukee Railroad Company, which might be included in, covered, or conveyed, or intended to be covered or conveyed, by said mortgage deeds, in order to pay the said outstanding bonds and interest, and the costs and expenses of the said sale. That said sale so advertised to take place on the said 26th of March, 1859, was on that day adjourned to the 23d day of April, 1859, and on said last-named day was further adjourned by said William Barnes until the 21st day of May, on which last-named day said Barnes, assuming to act under and by virtue of the power contained in said mortgage deeds and in pursuance of the advertisement so made, and at the time and place therein mentioned, offered said mortgaged premises for sale at public auction, and no other person bidding therefor, said Barnes finally bid the sum of $1,593,333 33-100, and thereupon pretended to strike off said mortgaged premises to himself on said bid, as trustee for said bondholders, and for their use and benefit. That no money was paid by said Barnes or by any other person for him on said sale, and that no part of said bid was ever paid by said Barnes or any other person, except that some of said bondholders, but how many this defendant is ignorant, have surrendered their bonds thereon. That at the time of said pretended sale there was but $1,347,000 of said $2,000,000 of bonds outstanding, including the said $1,147,000 so as aforesaid fraudulently pledged and sacrificed and otherwise disposed of at five cents on the dollar, and that the interest on the said $1,347,000 so outstanding up to the day of said sale, amounted to the sum of $83,814, making the whole sum, principal and interest, outstanding and secured by said mortgage on the day of said sale, only $1,430,814, including the said bonds so as aforesaid pledged and disposed of as aforesaid, and that said pretended bid of said Barnes so as aforesaid made, exceeded the total amount outstanding and secured by said mortgage by at least the sum of $162,519 33, which last sum should have been paid over by said Barnes, or those for whom he was acting, to be applied in payment of the liens on said property subsequent to said mortgage, but that no part thereof has been paid over by said Barnes, or any person for him, or applied on said subsequent liens. But this defendant, on information and belief, in fact says, that at the time of said pretended sale by said William Barnes on said mortgage, there was only the sum of about $235,000 due or owing on or represented by said bonds and secured by the said mortgage so as aforesaid given to William Barnes, together with the interest thereon from the 1st day of July, 1858, to the time of said sale, to wit: the said $200,000 as so aforesaid paid by said company in satisfaction of its debt; for the purchase of the
9 line of the Land Grant road from Madison to Portage, and the building of the said Fox Lake branch as above set forth, together with the sum of about $35,000 so as aforesaid advanced upon the said $1,147,000 of bonds pledged by said company as aforesaid, and that in equity and good conscience only the said sum of $235,000, and interest, could be allowed on said bid so as aforesaid made by said

William Barnes, and that all the rest and residue of said bid should have been paid over by said Barnes to be applied, so far as required on subsequent oncumbrances, so far as necessary, and the residue should have been paid to said La Crosse & Milwaukee Railroad Company, and that it was necessary that such payment should have been actually made before title to said mortgaged property would pass in pursuance of said sale. That afterwards, and on the 21st day of July, 1852, said Barnes made a declaration, with his hand and seal thereto subscribed, under oath, setting forth his proceedings in the premises and claiming thereby that the equity of redemption in said mortgaged premises of said La Crosse & Milwaukee Railroad Company, and all persons claiming by, through, or under them, subsequent to the 21st day of June, 1858, would be entirely barred and foreclosed at the expiration of one year from said sale, unless redeemed under the statute in such case made and provided. But this defendant shows that said mortgage was duly recorded in the register's office of Milwaukee county, and that no affidavits, such as are required by law to be filed in the register's office, in case of foreclosure by advertisment, have ever been filed in the register's office of Milwaukee county, and that there is no record of said pretended foreclosure in the said county of Milwaukee. That the said William Barnes assumed to bid off said premises for the benefit of said bondholders in virtue of the provisions of an act of the legislature, approved February 8th, 1859. That at the time said mortgage was made and bonds issued, no such law was in existence, and as this plaintiff is informed and believes but a small portion of the said bondholders ever authorized said Barnes to bid off said premises for their benefit, and that said act was of no binding force upon the bondholders under said mortgage, and was no authority to said William Barnes to bid off said premises in the names of said bondholders and for their benefit, except so far as they assented to it. That after said pretended sale, and on and about the 22d day of May, 1859, certain of said bondholders, holding in the aggregate $757,800 of said bonds, besides those deposited in the hands of Stoddard Judd as aforesaid, (who pretended to act with them, but without authority, and has never pretended to surrender said bonds or take stock therefor,) together with said William Barnes, made and signed articles of association pursuant to chapter 79 of the Revised Statutes of Wisconsin, and filed the same with the secretary of state, by which they assumed to take the name of the Milwaukee & Minnesota Railroad Company, and to organize themselves into a corporation by that name, and from thence have claimed to be a corporation, and that as such corporation they had acquired the title of said La Crosse & Milwaukee Railroad Company to all the property and effects mentioned and described in said mortgage deeds so as aforesaid made to said William Barnes, and that by virtue of said mortgage deeds the aforesaid foreclosure thereof, and sale to said Barnes, and the organization of said Milwaukee & Minnesota Railroad Company, said pretended corporation had succeeded to all the rights, privileges, franchises, and property of the said La Crosse & Milwau-

kee Railway Company, subject to the liens thereon prior in date to said 21st day of June, 1858; and that from and after one year from said sale so made by said Barnes to himself, said La Crosse & Milwaukee Railroad Company, and all persons claiming by, through, or under it, and all liens thereon subsequent to the 21st day of June, 1858, would be forever barred and foreclosed of and from all right and equity of redemption in said mortgaged premises. That said pretended organization of the said Milwaukee & Minnesota Railroad Company, although claiming to be the owner of said property as aforesaid, is not now and never has been in the possession and enjoyment thereof, or of any part or portion thereof, and has not now and never has had any management or control of the same.

And this defendant submits to this honorable court that said pretended foreclosure, sale, and organization of said Milwaukee & Minnesota Railroad Company are fraudulent and void, without force or validity.

1st. Because it was pretended and claimed by said Barnes, and those for whom he acted, that the full sum of $2,000,000 had been issued under said mortgage, and that that amount was actually outstanding and secured by the same at the time of making said pretended foreclosure and sale, when, in truth and in fact but $200,000 in bonds had been actually and in good faith issued under said mortgage, and the further sum of $35,000 which had been borrowed or secured by the plege of said $710,000 of said bonds, as above set forth, making the whole amount actually and in good faith secured by said bonds and mortgage only the sum of $235,000, and interest thereon.

2d. Because in the said notice of sale and other proceedings of said foreclosure, said Barnes represented and stated that the sum of seventy thousand dollars of interest had accrued and fallen due on said bonds secured by said mortgage on the first day of January, 1859, and that on that day said company made default in the payment of that sum, when in truth and in fact there was due on said first day of January, only the sum of about $8,225, being the interest for six months on the aforesaid sum of $235,000.

3d. Because the said pretended purchase by said Barnes was unauthorized, and was not in fact a bona fide purchase; that his said bid was never paid, and that the title of said mortgaged premises did not and could not pass to said pretended purchaser until the amount of said bid was fully paid.

4th. Because said foreclosure and sale was in other respects irregular and fraudulent as to creditors.

5th. Because said bondholders were not authorized to organize a company under the provisions of chapter 79 of the Revised Statutes of Wisconsin, if said foreclosure had been regular, valid, and effectual, until the expiration of one year after the said sale by said Barnes.

And this defendant, further answering on information and belief, denies that said Barnes ever conveyed to said Milwaukee & Minnesota Railroad Company the property and things by him purchased as aforesaid, except that he united with certain of the bondholders

in making and executing the said articles of association of said company, or that said Milwaukee & Minnesota Railroad Company ever afterwards entered into the possession of said property or franchises of said La Crosse & Milwaukee Railroad Company, or of any part or portion thereof. And this defendant charges and insists that said pretended foreclosure was for the reason aforesaid fraudulent and void and of no validity whatever; that said complainant, by virtue the proceedings aforesaid, did not become a corporation under the laws of the State of Wisconsin; that it did not thereby become the successor of the La Crosse & Milwaukee Railroad Company, as to all the property and things described in said deed to said Barnes and the owner of and clothed with all the rights, privileges, franchises, and property of said La Crosse Company, as claimed in said bill of complaint, or any part or portion thereof, but that said proceedings were void and of no force or effect whatever.

This defendant, further answering on information and belief, denies that said complainant is a creditor of the La Crosse & Milwaukee Railroad Company, or entitled to the rights or privileges of such creditor, or that it has the right to collect and enforce all or any action or actions, or cause or causes of action existing in favor of said La Crosse & Milwaukee Railroad Company.

And this defendant, further answering, admits and says that the La Crosse & Milwaukee railroad, so called, extends from Milwaukee to La Crosse; that the eastern ninety-five miles is called the eastern division, and that portion thereof lying west of ninty-five miles is called the western division.

This defendant admits the execution of the mortgages to Francis A. Palmer, as mentioned in the bill of complaint, and that there are now outstanding bonds, issued under said mortgage, amounting to $875,000, and that said mortgage is a first lien upon the eastern ninety-five miles of said road, and that no proceedings have ever been had to foreclose the same.

The defendant further admits and says, that said La Crosse & Milwaukee Railroad Company, on the 31st day of December, 1856, executed and delivered to Greene C. Bronson, James T. Soutter, and Shepard Knapp, as trustees, a certain mortgage or trust deed of that date, which is called and known as the Land Grant mortgage, a copy of which is annexed to said bill, as Exhibit No. 5; and that afterwards, to wit, on the 17th day of August, A. D. 1857, the said La Crosse & Milwaukee Railroad Company made and delivered to said Greene C. Bronson and James T. Soutter the deed of trust attached to said bill of complaint, as Exhibit No. 6.

And this defendant, further answering, says that said La Crosse & Milwaukee Railroad Company was one corporation; that its railroad was one continuous line from Milwaukee to La Crosse; that all its rolling stock was purchased for the common benefit of the whole road, and out of the common funds of the company; that no portion of said rolling stock belonged, was assigned or pertained to one division as against the other, but that it was all procured for and used on the entire length of said road from Milwaukee to La Crosse, without

respect to the different divisions of the road; and that all of the mortgages given by said company were intended to include, and in fact did include, all the rolling stock of the whole road belonging to said company, and it was intended by said company that said mortgages should, and they in fact did, become liens upon the whole of said rolling stock, as well that acquired before the giving of said mortgage as that subsequently acquired, in the order of time in which said mortgages were given. And this defendant denies that in giving said mortgage to Bronson, Soutter, and Knapp, and Bronson and Soutter, it was not intended to make the Bronson and Soutter mortgage subject and inferior to the Bronson, Soutter and Knapp mortgage as to the rolling stock of said company; and further denies "that neither of said mortgages describes and conveys any portion of the premises described and conveyed in the other;" but on the contrary, this defendant says that it was the intention in both of said mortgages to grant and convey, and that both of said mortgages in fact did grant and convey all the rolling stock of said company, as well that theretofore as that thereafter acquired. And that said mortgage, so as aforesaid given to Bronson, Soutter, and Knapp, conveyed to them all the rolling stock of said company of every name and description, including all that previously as well as that subsequently acquired by said company, and that the lien of said mortgage upon the whole of said rolling stock was prior and superior to any other rights or claims thereto, or liens thereon, made or created by said La Crosse & Milwaukee Railroad Company subsequent thereto.

This defendant, further answering, admits that Bronson, Soutter, and Knapp filed their bill to foreclosure said mortagage on the 5th day of December, 1859, and that such proceedings were thereupon had that a final decree of foreclosure and sale was made therein on the 13th day of January, 1862; and this defendant also admits that said Bronson and Soutter, on the 9th day of December, filed their bill to foreclose the mortgage given to them, as stated in said bill of complaint.

And this defendant, further answering, admits, on information and belief, that all the parties made defendants in said foreclosure suits, had or were supposed to have some lien upon or interest in said mortgaged premises, and that while all necessary parties were made defendants, there were many proper parties having subsequent liens, who were not so made defendants, and this defendant admits that said two foreclosure suits were independent suits.

This defendant, further answering, says that the mortgage so as aforesaid given to said Bronson, Soutter, and Knapp, described said rolling stock, in these words: "All and singular the locomotive, engines, and other rolling stocks, and all other equipments of every kind and description, which have already been, or may hereafter be, procured for or used on said roads or either of them, and all the materials, tools, implements, utensils, and other personal property, which have been or may hereafter be procured for or used in connection with said roads or either of them;" and the same description was contained in the said mortgage to Bronson and Soutter, and the

bill of complaint in each of said foreclosure suits claimed the whole of the rolling stock, materials, tools, implements, utensils, and other personal property which had been procured for or used in connection with said road by said La Crosse & Milwaukee Railroad Company up to the time of filing said bills of complaint.

This defendant admits that on the 11th day of March, 1861, said district court made an order of reference to the masters named in said bill of complaint, but this defendant denies that said order was made for the purpose of ascertaining what and what amount of rolling stock was included in and encumbered by the said mortgage to Bronson, Souter, and Knapp, but says that it was made for the purpose of ascertaining what part of the rolling stock could be shown affirmatively to have been purchased by the proceeds of the bonds issued under the said mortgage so as aforesaid given to said Bronson, Souter, and Knapp, and to said Branson and Soutter. And that said district
11 court deemed said inquiry material, for the reason that said court held that each of the mortgages given by said La Crosse & Milwaukee Railroad Company covered and included the whole rolling stock on the whole of said road, and that said several mortgages as to said rolling stock would have priority, according to their respective dates, except that so far as it could be affirmatively shown that any specified portion of said rolling stock had been purchased by the proceeds of either of the mortgages subsequent to the first, and that in such case said subsequent mortgage would, as to such specified portion of said rolling stock, have a lien superior to the lien of the mortgages prior in date: that said district court, on the said 11th day of March, 1861, and immediately before making said order of reference, delivered a written opinion in said foreclosure suit, an extract from which is hereto annexed, marked as Exhibit No. 1, enunciating the principles above stated as the rule that was to govern said masters in their examination and report on said matter, and limiting their inquiry on that subject to the single point as to whether it should be affirmatively shown to them that any of said rolling stock had been purchased by the proceeds of the bonds secured by the mortgages given either to Bronson, Soutter, and Knapp, or to Bronson and Soutter. That upon examination, said masters ascertained that said La Crosse and Milwaukee Railroad Company had no record showing what was done with the proceeds of the bonds issued under said mortgages, but that the said proceeds went into the common treasury of said company, and that all of said rolling stock was purchased with the funds taken from said common treasury, and for that reason it was impossible to show affirmatively that any particular or specified portion of said rolling stock was purchased by the proceeds of said bonds, except the said forty box cars, specially mentioned in said masters' report, which said forty box cars were purchased on the note of the company, indorsed by Samuel Brown and another, and that at the time of making such indorsement thirty of said land grant bonds were placed in the hands of said indorsers as security for their indorsement: that said company failed to pay said note, and said indorsers subsequently settled the same by transferring to the holder

thereof said thirty bonds. Said masters therefore reported in accordance with the opinion so as aforesaid given; that said forty box cars were covered by and included in the mortgage executed to Bronson, Soutter, and Knapp, because they were purchased with land grant bonds. This defendant admits that an exception was filed by the complainants in that suit, which was overruled by the court, but this defendant insists that said exception to said report was for the purpose of claiming the said land grant mortgage was a first lien upon all of said rolling stock, prior and superior to the said Palmer mortgage mentioned in said bill of complaint, for the reason that at the time said Palmer mortgage was made there was no law in the State of Wisconsin declaring rolling stock a fixture, and that said Palmer mortgage was never filed so as to make it valid as a mortgage of personal property, and said exception was so considered and treated by the counsel and the court, as will more fully appear by reference to the written opinion of said district court, delivered on overruling the same, an extract from which is hereto annexed as Exhibit No. 2.

This defendant further admits that on the 13th day of January, 1862, said district court in said land grant foreclosure suit, made a final decree therein, foreclosing said western division mortgage, and decreeing a sale of the mortgaged premises in the said mortgage described, but expressly denies that said decree declares that all the said rolling stock on the whole of said road, except the said forty box cars and the said proportion of rolling stock purchased by the receiver, belonged to and was covered by the mortgages on the eastern division. This defendant shows to this court that said decree expressly ordered, adjudged, and decreed that all the rolling stock of said La Crosse and Milwaukee Railroad Company that had been procured for or used on said road should be sold under and by virtue thereof, and after so directing the sale of all of said stock, specially mentioned the said forty box cars and the proportion of rolling stock purchased by the receiver, being a part of that first mentioned and the part which the previous adjudication of the court had determined said land grant mortgage was the first lien upon, and then directed or adjudicated that all of the balance of said rolling stock first named and directed to be sold is subject to mortgages prior to the land grant mortgage. And this defendant says that said court did decree and order the sale of all the rolling stock on said road, purchased by the La Crosse company, and the proportion of the stock purchased by the receiver, belonging to the western division, and that said forty box cars and said proportion of rolling stock purchased by said receiver should be sold free and clear from all encumbrance, and that all the remainder of said rolling stock on said road, when the receiver took possession thereof, should be sold, subject to mortgages given by the La Crosse company, prior in date to the said land grant mortgage, and that such was the understanding and interpretation of said decree, by the complainants therein, Bronson, Soutter, and Knapp; that with that understanding thereof, they caused the same to be executed by the marshal of said district of Wisconsin, by a sale of said premises; that said marshal advertised said premises for sale, and in

his advertisement set out the mortgaged premises "in hac verba," as contained in the mortgage, and followed the same with this explanation, to wit:

"The rolling stock hereinbefore mentioned is to be sold subject to the lien of mortgages executed prior to the 31st day of December, A. D. 1856, except forty box cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408; and except such proportion or share of said rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenue of the portion of railroad of the La Crosse and Milwaukee Railroad Company hereinbefore mentioned and described bears to the balance or other end of said road since the appointment of the receiver, which said forty box cars and said proportion of rolling stock purchased by the receiver, are to be sold free and clear of any encumbrance whatever."

A copy of which advertisement is hereto attached and made a part of this answer as Exhibit No. 3.

That in virtue of said decree and in pursuance of said advertisement, which was read at full length on the sale, said mortgaged premises were sold as advertised, on the said 25th day of April, 1863; that afterwards, and on the 28th day of April, 1863, the said marshal filed his report of said sale with a printed copy of said adver-
12 tisement of sale thereto attached, a copy of which report, without the advertisement thereto attached, is attached to said complainant's bill as Exhibit No. 14.

That in and by said report said marshal reported as follows, to wit:

"And I then offered for sale, and sold in like manner, the balance of the premises and property described in said decree, as follows, to wit: all and singular the several tracts, pieces, or parcels of land which constitute the site of the roadways, turn-outs, engine houses, workshops, depots, and other buildings, and all the other lands and real estate which constitute part of the roads of said railroad company from Madison, by way of Portage City to the St. Croix river or lake, between townships 25 and 31, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, and all the engine houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have been procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils and other personal property which have been procured for or used in connection with said roads or either of them; and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company, of every kind and description relating to said roads, (of said rolling stock, forty box cars, numbered respectively 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362,

364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and such proportion or share of rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenues of the portion of the road covered by the aforesaid mortgage bear to the balance or other end of said road, was sold free and clear of all lien or encumbrance; but the remainder of the above mentioned rolling stock was sold subject to the lien or mortgages prior in date to the mortgage above mentioned, given by said La Crosse and Milwaukee Railroad Company,) together with the tolls, rents, and income to be had or levied therefrom, and all corporate or other rights, franchises, and privileges of the said company, of, in, and to or concerning the same, being all the property, real and personal, described in the said mortgage, (except the lands therein mentioned, granted by Congress to the State of Wisconsin,) and all and singular the privileges, hereditaments, and appurtenances to the same belonging, or in anywise appertaining, situate, lying, and being in the State of Wisconsin, which was bid off by William Wallace Pratt and William H. White, for the sum of two million six hundred and seventy-five thousand dollars, ($2,675,000,) they being the highest and best bidders, and that being the highest and best bid made for the premises last above described."

That said report was filed in the office of said clerk on the said 27th day of April, 1863, and on the same day certified copies thereof were taken from said clerk by the Milwaukee and Minnesota Railroad Company, through M. H. Carpenter, its counsel, by Mr. Ryan, as counsel for Francis Vose and others, by Butler, Buttrick, and Cottrill, as counsel for J. Albert Helfenstein; that the consideration of the confirmation of said report was then adjourned by said district court at the request of said parties, to the 2d day of May; that on the 2d day of May said Milwaukee and Minnesota Company, Lawrence G. Graham and Donald D. Scott, through said M. H. Carpenter, filed eleven written exceptions to said report; that Mr. Ryan, as counsel for Francis Voce and others, on the 1st day of May, 1863, filed sixteen written exceptions thereto; that Butler, Buttrick, and Cottrill, as counsel for J. Albert Helfenstein, on the 2d day of May, filed nine written exceptions thereto; and that on the same day Mr. Hubbel, on behalf of Sebre Howard, Lawrence G. Graham, and Donald D. Scott, filed four written exceptions thereto, a copy of which said exceptions so filed by said Milwaukee and Minnesota Railroad Company is hereto annexed and marked Exhibit No. 4.

That afterwards, and on the 4th day of May, 1863, the hearing of said exceptions was commenced by said district court, and the same was continued for two days. Messrs. Carpenter, Ryan and Hubbel were all heard at full length, in support of their said several exceptions, and in opposition to the confirmation of said report of said sale as made. And after said hearing on the 5th day of May, 1863, said court made an order in said cause, overruling each and every of said exceptions so taken, and confirming said report of said sale as made;

and this defendant insists that said order so made, after a full hearing upon said report and the exceptions thereto, was an express adjudication that the rolling stock in question was included in the said decree of foreclosure and sale, and that the said court so decided that it was so included, and that the said order and decision so made must be held an adjudication upon the construction of said decree of foreclosure and sale, binding upon all the parties excepting to said report of said sale, and that said complainant is thereby estopped from claiming said rolling stock, and this defendant claims the same benefit and advantage therefrom as though it had pleaded the same in bar to said complainant's said action.

This defendant admits that Exhibits Nos. 9 to 15, attached to said bill, are correct copies of said originals, except No. 14 does not contain a copy of the advertisement of sale, which forms a part of said report. This defendant further admits that said purchasers, William Wallace Pratt and William H. White, did immediately after said sale, on said 5th day of May, 1863, organize this defendant as a corporation under and in pursuance of the laws of the State of Wisconsin, with authority in that behalf to take, hold, and operate the said mortgaged premises purchased by them as aforesaid, and took as the corporate name of said corporation the name and style of the Milwaukee and St. Paul Railway Company, and thereupon this defendant says that Pratt and White conveyed to this defendant the whole of said mortgaged premises so purchased by them, and that from thence hitherto this defendant has been and now is a corporation, under the corporate name of the Milwaukee and St. Paul Railway Company, and in that character and capacity holds and operates said mortgaged premises so as aforesaid purchased by said Pratt and White. This defendant further shows that by said proceedings in said foreclosure suit to a sale and confirmation as hereinbefore stated, and the conveyance of said mortgaged premises by said Pratt and White to this defendant, this defendant became the absolute owner thereof and entitled to hold, use, and operate said mortgaged premises
13 as a railroad, with all the powers, rights, privileges, and franchises which were of said La Crosse and Milwaukee Railroad Company pertaining to said mortgaged premises, as fully and completely as it would have done had the legislature granted directly to this defendant a charter with all the powers, rights, privileges, and franchises of the La Crosse and Milwaukee Railroad Company over said mortgaged premises; and this defendant further shows that on the 6th day of May, 1863, this defendant applied to said district court to be let into possession of the property so as aforesaid purchased by this defendant, and for other purposes, by petition filed in said western division foreclosure suit, a copy of which is attached to the bill of complaint in this case, as Schedule A; that upon making said application Mr. Ryan, on behalf of Francis Vose and others, objected generally to its being granted on the same grounds that he had urged to the confirmation of the sale, but stated that he did not desire to argue the question. At the same time Mr. Carpenter, on behalf of the Minnesota company, objected to granting said application, ex-

cept as to the road bed of the western division, and the rolling stock specially named and described in the decree, and desired time to prepare an answer in opposition to the same; that thereupon, on the 7th day of May, 1863, said district court granted said application, so far as the same was not opposed by said Carpenter, but with the condition that this defendant should operate said western division jointly with the receiver, and in connection with the said eastern division, until the further order of said court, and that said receiver in the meantime should receive and hold all the revenues, tolls, and income arising from the operation of the whole road; and the said court further ordered that an inventory of all the rolling stock and other personal property be made by the receiver, and filed on the 8th day of June then next, as appears by Schedule A, attached to said bill. And thereupon the further consideration of said application was then continued to the 9th day of June, at the request of Mr. Carpenter, to enable him to prepare the answer of the Milwaukee and Minnesota Railroad Company to oppose said petition; that this defendant never took possession, nor was it possible for it to take possession of any part or portion of said road or property under the order so made, but the whole thereof continued in possession of the receiver, and was operated by him the same as before the making of said order; that afterward, and on the 10th day of June, said Hans Crocker filed said inventory, as receiver, and on the 11th day of said June said complainant filed its two answers to said petition, copies of which are hereto annexed as Exhibits Nos. 5 and 6, by which said answers the issue was directly made as to whether said decree, sale, and confirmation covered and included said rolling stock; and thereupon said petition and answer were heard and fully argued by counsel for the respective parties. And afterwards, and on the 12th day of June, 1863, said district court made an order in said land grant foreclosure suit of Bronson, Soutter, and Knapp, as follows, to wit:

"In consideration of the said petition of the Milwaukee and St. Paul Railway Company, and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee and St. Paul Railway Company all and singular the railroad between the city of La Crosse and Portage City, its road-bed and track, with its depots, station-houses, and all other property belonging to said railroad between the said points, and the forty box cars mentioned and described in the decree, and also the share or proportion of the rolling stock and personal property purchased by the receiver, as mentioned in the decree, and also subject to other or previous liens or claims, the possession of the rolling stock on hand when the receiver took the same under the order of the court. And it is further ordered by the court, that the said receiver be, and hereby is, discharged as such from the management and control of the said western division of said railroad, under appointment in this case; subject, however, to the order made in this case, and in the other cases in which he was appointed, or may hereafter be appointed."

That under and by virtue of said order the said receiver delivered to this defendant said western division of said railroad, said forty box

cars, and said proportion of rolling stock purchased by said receiver, together with all the rolling stock on said road when said receiver took said road under his appointment as receiver; that this defendant so received possession thereof on the morning of the 13th day of June, 1863, and from thence hitherto has held possession of the same as owner thereof, under the purchase so as aforesaid made, the confirmation thereof, and the order of the court last above recited.

And this defendant further says that said order of June 12th, above set forth, has never been declared void for want of jurisdiction by the supreme court, or any other court, and that it has never been set aside, vacated, or rescinded by the court that made it, or by any other court; and this defendant submits that said order is in full force, and unreversed.

And this defendant further says, that it was the understanding and belief of said complainants, in said land grant foreclosure suit of said Pratt and White, when they made their said bid at said marshal sale, and of this defendant, at its organization; that said decree of foreclosure, in said western division suit, covered and included not only the road-bed of the said western division, said forty box cars, specially named, and the proportion of rolling stock purchased by the receiver, specified in said decree, but also subject to mortgages prior in date to said Bronson, Soutter & Knapp mortgage, given by said La Crosse and Milwaukee Railroad Company, all the rolling stock on said road when the receiver took possession of the same on the 11th day of June, 1860.

And this defendant submits and insists, that by the proceedings of said court on said petition, the answers of the Milwaukee and Minnesota Railroad Company thereto, and the order and decree of the court thereon, the said Milwaukee and Minnesota Railroad Company are foreclosed, barred, and estopped from setting up or claiming, in this action, any right, title, claim, or interest of, in, or to said rolling stock, so on said railroad on the 11th day of June, 1860, when said receiver took possession of the same. And this defendant claims the same benefit thereof, by this answer, that he might or could have had had he pleaded the same in bar of the said complainant's said bill of complaint.

And this defendant further says, that the amount of the decree in the said western division foreclosure case on the 25th day of April,
1863, was $3,921,291; that the proceeds of said marshal sale
14 were $2,800,000, which, deducted from the amount of said decree, at the date of said sale, left the sum of $1,128,291 of said decree unpaid, and that said sum, together with interest thereon since the 25th day of April, 1863, still remains unpaid, and secured by said bonds, issued under said mortgage so as aforesaid, given to said Bronson, Soutter & Knapp; that the defendant is now the owner in its own right of all said bonds, except about $25,000, which are in the hands of unknown owners, or are lost or destroyed. This defendant, therefore, insists that it is a creditor of said La Crosse and Milwaukee Railroad Company, and entitled to the rights and remedies of such creditor.

This defendant admits that no proceedings were ever had in the said Bronson, Soutter & Knapp mortgage suit to ascertain the proportion which the net earnings of the said western division mortgaged premises bore to the net earnings of the eastern division mortgaged premises during the time mentioned in said decree in that behalf, and that the same have never been ascertained by any judicial proceeding; that this defendant expressly denies that there was no net earnings of said western division, or that the expense of operating the same was more than the whole gross earnings of said western division. This defendant admits the appointments of Hans Crocker, esq., as receiver, as stated in said bill; the making of the order of reference in the eastern division foreclosure suit; the report of the masters thereon, on the 7th of October, 1861, and that Exhibits 16 to 23 are correct copies of the originals; but this defendant shows that the order of said district court, made on the 7th day of January, 1862, modifying said report by said masters, as appears by said Exhibit 21, modified said report by striking therefrom the statement that all of said rolling stock, except said forty box cars, were included in and covered by said mortgage, so as aforesaid given to Bronson & Soutter, not that said mortgage did not cover and included it, but for the reason that the sole object of that reference in that case was to ascertain what part of said rolling stock was purchased by the proceeds of the bonds issued under said mortgage, because in the opinion of said district court said mortgage, as to such part of said rolling stock, would have a lien prior and superior to the mortgages prior in date to said Bronson & Soutter mortgage; and inasmuch as it did not apear to said masters that any part of said rolling stock was purchased by the proceeds of the bonds issued under said Bronson & Soutter mortgage, they should not have reported that any portion of said rolling stock was included therein, and for that reason said report was modified by striking out all that pertained to said Bronson & Soutter mortgage.

This defendant admits that an appeal was taken from the decree in said Bronson & Soutter mortgage to the supreme court, and that the decree made January 13th, 1862, was reversed, and that no final decree was entered in said cause until the 27th day of September, 1864, and that said Hans Crocker, esq., still remains receiver in said Howard suit, as well as in the suit of Bronson & Soutter. This defendant also admits that said Howard suit was commenced upon a judgment, as stated in said bill; but this defendant says that said judgment was recovered upon a judgment theretofore rendered in the State court, which said judgment of the State court was recovered prior to the making of the Barnes mortgage, and that the lien of said State court judgment was prior to the said Barnes mortgage, and the lien thereof prior and superior to the lien of the Barnes mortgage, and that said lien was not extinguished by the foreclosure of the Barnes mortgage, admitting said foreclosure to have been valid, which this defendant denies; and this defendant denies that the prior and subsequent appointments of said Crocker, as receiver in the said Bronson, Soutter, and Knapp suit, and in the said Bronson & Soutter suit, had the

effect to render inoperative his said appointment in said Howard suit, either in whole or in part, but that each and all of said appointments stood in full force, notwithstanding the others. This defendant denies that it designs or intends to injure, oppress, or defraud said complainant; but this defendant does claim and insist that, as against said complainant, it is the absolute owner of all the rolling stock which was upon said railroad at the time of the appointment of said receiver, and of the proportionate share of the rolling stock purchased by the receiver mentioned in the decree in the said Bronson, Soutter & Knapp foreclosure, and all the franchises that belonged to the La Crosse and Milwaukee railroad pertaining to the western division of said road, but denies that it claims to have acquired the rights, as against said complainant, to use and operate the eastern division of the said railroad, or to take and receive and keep as its own the earnings, income, or revenue of said eastern division.

This defendant denies that it ever fraudulently combined or confederated with said Hans Crocker for any purpose, or that it was fraudulently or corruptly arranged or agreed between them on the 12th day of June, 1863, or at any other time, that this defendant should enter upon or take possession of the eastern division and rolling stock and franchises of said road, and receive the rents, revenues, tolls, and incomes arising therefrom, in defiance of law, or in fraud of said complainant's rights. This defendant admits that the said district court, on the 12th day of June, made the order marked Exhibit 24, attached to said bill, supposing that said cause was pending in said district court, instead of said circuit court, and the same order was entered in the circuit court in the case of Sebre Howard; and that afterwards said defendant, on the 13th day of June, 1863, by virtue of the order entered in said Howard case, but not in fraud of complainant's rights, nor by the acquiescence and consent of the said Hans Crocker, except as said order provides, entered into possession of the eastern division of said road, and the proportion of rolling stock purchased by the receiver belonging to said eastern division, but of no other property or rolling stock whatever, and thereafter continued to operate said eastern division, as provided in said order, and so continued to do until the first day of May, 1864, on which day, in pursuance of the order of this court, Exhibit 25 of bill made on the 28th day of April, 1864, in the Bronson & Soutter and in the Howard suits, said road, and the rolling stock so received were returned by this defendant to said receiver, who has since controlled and managed the operation thereof; and this defendant denies that under the said order of the 12th of June, 1863, entered in said Bronson & Soutter eastern division case it received any rolling stock, except the proportion of rolling stock purchased by the receiver, and belonging to said eastern division.

This defendant, further answering, says that there has never been any division or separation of the rolling stock on said road, but that the same has been used indiscriminately upon both divisions. But this defendant denies that it is in any manner indebted to said complainant for the use thereof, but on the contrary, a

fair accounting will show said eastern division largely indebted to the western for the use of said rolling stock.

This defendant admits that the Supreme Court of the United States, held said order of June 12th, entered in the eastern division case, void, for the reason that it was entered in the district and not in the circuit court. This defendant admits the order entered in the Howard case in the circuit court was vacated by the said circuit court at the time mentioned, and the order entered in the district court was vacated and set aside by the circuit court; and this defendant shows that after the entry of said last-named orders, to wit, on the first day of May, this defendant, in pursuance of said orders, surrendered said road to said receiver, and that ever since that time this defendant has operated said road under the direction of said receiver, and subject to his orders and under his control, and has faithfully accounted to said receiver for all the revenues, tolls, and incomes arising therefrom. And this defendant denies that it has violated the orders of this court, or acted in contempt of its authority, or in fraud of the rights of the complainants.

This defendant admits that it owns the said road mentioned in said bill of complaint, commonly called the Milwaukee and Western railroad; that at the time said bill was filed it was building the additions thereto mentioned in said complaint; that said line is now completed from Milwaukee to Portage City, and, in connection with said western division, now constitutes a direct through line from Milwaukee to La Crosse belonging to this defendant. That this defendant also owns the railroad known as the Milwaukee and Horicon railroad, and that the legislature at its recent session passed an act ratifying and confirming the organization of this defendant as provided by its articles of association, filed May 5th, 1863, in the office of the secretary of state, and declaring said defendant to be a corporation with all the rights, powers, privileges, and franchises which were of the Milwaukee and Western Railroad Company, the Milwaukee and Horicon Railroad Company, and of all that part of the La Crosse and Milwaukee Railroad Company pertaining to its road lying west of Portage City, which act was approved and became a law on the 10th day of April last.

And this defendant insists that by virtue of its organization, as aforesaid, it acquired and possessed the right to separate and disconnect the said railroad from Portage City to La Crosse from the said eastern division, from Portage City to Milwaukee, and to use the said western division independent of the said eastern division, and to connect it with said railroad from Milwaukee, by way of Watertown and Columbus, to Portage City, and make the same one line of road; that at the time said mortgage, so as aforesaid given to Bronson, Soutter & Knapp, was made, to wit, on the 31st day of December, 1856, said railroad from Milwaukee, by way of Watertown and Columbus, to Portage was a part of the La Crosse and Milwaukee railroad, and belonged to the La Crosse and Milwaukee Railroad Company; and that by the provisions of the act of the legislature of Wisconsin of 1856 relating to railroads, said La Crosse and Milwaukee

Railroad Company was fully authorized to mortgage the whole, or any portion of its line as it should think proper, and the purchasers, under a foreclosure of such mortgage, were fully authorized to exercise and enjoy thereafter all and the same rights, privileges, grants, franchises, immunities, which belonged to and were enjoyed by the company making said mortgage; that at the time said mortgage was so given said La Crosse company was the owner of said road, by way of Watertown and Columbus to Portage, and said western division was as much connected to the road, by way of Watertown and Columbus to Portage City, as it was with the said eastern division.

This defendant denies that it intends to tranfer, or has transferred, any rolling stock belonging to said complainant from said eastern division to said Watertown road; but this defendant admits that it is now using a part of said rolling stock, so as aforesaid purchased at said foreclosure by this defendant, on the said western division of said road, and on said Watertown division, which said two divisions now constitute one through line of road from Milwaukee to La Crosse, and the remainder of said rolling stock is still on said eastern division and in use thereon. This defendant denies that it so using said rolling stock in fraud of the rights of said complainant, or to its irremediable injury, or that said eastern division has in any manner been injured by such use of said rolling stock; and this defendant says that since the filing of said bill of complaint said eastern division has at all times had all the rolling stock required to transact the business offering over said eastern division.

And this defendant expressly denies that this defendant, its officers, or stockholders are now, or ever have been, in fraudulent combination or collusion with Hans Crocker for any purpose. It denies that this defendant, its officers, or stockholders have ever given out or pretended that the rights of this defendant and said complainant, respectively, as to said rolling stock, were or are left so vague and indefinite by the said proceedings and decree in said western division mortgage foreclosure suit, that this defendant, being in possession, could dictate to or force a settlement with said complainant as the defendant should see fit, or that the orders and proceedings in said western division mortgage foreclosure suit were purposely made and rendered vague and indefinite, as aforesaid, for the purpose of compelling said complainant to settle with the purchasers at the sale of said western division foreclosure suit upon such terms as might be dictated by them. This defendant denies that it has had or now has illegal or fraudulent possession of said complainant's railroad rolling stock or franchises. It admits that it did have possession of the said eastern division of said La Crosse railroad, and of the proportion of rolling stock purchased by the receiver belonging to said eastern division, as fixed by the decree of foreclosure, in said western and eastern division foreclosure suits from the 12th day of June, 1863, until the first day of May, 1864, under the order of this honorable court modifying the order appointing the receiver in said case of Sebre Howard above named, and insists that said possession was right and lawful, and for the best interest of all parties having a real

or substantial interest in said road, and in no respect an injury or oppression to said complainant or its stockholders, and that it did not have the effect to depress the price of said complainant's stock in the market, or embarrass said complainant in carrying on its legitimate and proper business, and denies that this defendant
16 and said Crocker have ever been in corrupt and fraudulent collusion in that behalf, or have or are seeking in any manner fraudulently or corruptly to injure or oppress said complainant.

And this defendant denies that it has been in the possession or in the control of said eastern division, or its rolling stock, since the said first day of May, 1864. That on the 28th day of April, 1864, an order was entered in this court in the cases of Sebree Howard, and in the case of Bronson and Soutter, (of which Exhibit 25 of the bill is a copy,) vacating the order made in said causes on the 12th day of June, 1863, modifying the order appointing the receiver, whereby this defendant was placed in possession of the eastern division of said road, and said order of April 28th also directed that this defendant return to said receiver said road and appurtenances, and all rolling stock received under said order. That in pursuance of said order this defendant, on the first day of May, 1864, delivered to said receiver said eastern division of said road, and said proportion of rolling stock purchased by the receiver belonging to said eastern division as aforesaid, which was all the property received by this defendant under said order of June 12th, 1863, last above mentioned, and that since said first day of May this defendant has not been in the possession or control of the same, but the same has been in the exclusive possession and control of said receiver; that said receiver has employed this defendant to run said road since that time under his direction and control as the best and most economical arrangement that could be made for the time being, and the most profitable and advantageous for all parties having substantial interests in said eastern division, but that such arrangement is temporary, and subject to be terminated at any time at the option of said receiver.

And this defendant denies that it has ever attempted to depress the price of said complainant's stock in the market, or to injure or oppress the defendant, or that it is now attempting in any manner to injure or oppress said complainant.

This defendant, further answering, denies that it is using any part of said rolling stock unlawfully, or that the same is being lessened in value by the use thereof by this defendant; that said rolling stock is kept by this defendant in first-rate repair and condition, and that when said stock is so kept in first-rate repair and condition, it is not property of a character liable to great depreciation from use.

And this defendant expressly denies that it is using said rolling stock in an improper manner, or in such a way or manner as to greatly injure and depreciate its value, or that the yearly depreciation in value of said rolling stock from use in the manner in which this defendant has used and is now using the same would not exceed about seven per cent. of the value thereof, and the depreciation

thereof, standing unused and without repair, would be about twenty-five per cent. of its value per annum.

And this defendant denies that it has used or is now using said stock in fraud of the said complainant's rights in the premises.

This defendant admits and states that the value of said rolling stock, aside from said forty box cars and said stock purchased by said receiver, is about the sum of five hundred thousand dollars, and that the value of that purchased by the receiver is about the sum of $200,000.

And the defendant expressly denies that it is insolvent as alleged in said amendment to said bill of complaint, or that said complainant will be unable to collect a money decree against this defendant for the use of said rolling stock, should such complainant ever be fortunate enough to obtain such decree.

And this defendant, further answering, says there is a defect of parties in the said complainant's bill of complaint; that from the allegations and statements of said bill and the exhibits thereto attached, it appears and is made manifest that Francis A. Palmer, as trustee of the bondholders, secured by the mortgage executed to him and James T. Soutter, as survivor of Green C. Bronson, as trustee for the bondholders, secured by the mortgage executed to said Bronson and Soutter, severally have claims upon and interests in said rolling stock, and the franchises of said La Crosse and Milwaukee Railroad Company, prior and superior to the said pretended claims of the said complainant, and that it is necessary that said Francis A. Palmer and said James T. Soutter, survivor, as aforesaid, should be made parties, and brought before this court before the rights of this defendant can be finally and definitely settled in respect to said rolling stock, franchises, and property.

And this defendant further shows that the city of Milwaukee is a necessary and material party to the said complainant's bill; that said city holds two mortgages on said rolling stock, property, and franchises—one given by the La Crosse and Milwaukee Railroad Company, and the other by the Milwaukee, Fond du Lac, and Green Bay Railroad Company, with which last named company said La Crosse and Milwaukee Railroad Company afterwards consolidated, and assumed the payment of said mortgage; that both of said mortgages were given to said city, and became liens on said rolling stock, property, and franchises prior to the execution of said Barnes mortgages in said bill of complaint mentioned, and are now a valid and subsisting lien thereon to the extent of three hundred and fourteen thousand dollars.

And this defendant further submits and insists that said La Crosse and Milwaukee Railroad Company is a necessary and material party to the said plaintiff's bill of complaint on the facts stated in said bill and this answer.

And this defendant further shows that on the 26th day of September, A. D. 1857, the said La Crosse and Milwaukee Railroad Company mortgaged the whole of said rolling stock, property, and franchises mentioned in said bill of complaint to J. Albert Helfenstien,

as trustee for the security of the holders of bonds, to be issued under said mortgage; and that afterwards, in September, in the year 1857, about three hundred and eighty thousand dollars of bonds were issued under said mortgage, which said bonds, with the interest thereon, are now outstanding and secured by said mortgage, which said mortgage is a valid and subsisting lien thereon, prior and superior to the claims of said complainant, and that said J. Albert Helfenstien, as such trustee, is a necessary and material party to said bill of complaint.

And this defendant therefore submits and insists that said Francis A. Palmer, city of Milwaukee, James T. Soutter, survivor of Greene C. Bronson, J. Albert Helfenstein, and the La Crosse and
17 Milwaukee Railroad Company are, each and all of them, necessary and material parties to said bill of complainant, either as complainant or defendant; and that a final and complete determination of the matters contained in said bill cannot be had without said parties are brought before said court. And this defendant claims the same benefit of this answer as though it had demurred to said bill of complaint.

And this defendant, further answering, admits the death of the said Greene C. Bronson, as stated in said bill of complainant; without that, any other matter or thing material or necessary for this defendant to make answer unto, and not herein or hereby well or sufficiently answered unto, confessed, or avoided, traversed or denied, is true, to the knowledge or belief of this defendant.

All of which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in that behalf most wrongfully sustained.

Milwaukee and St. Paul Railway Co.,

By A. CAREY, *Sec'y.*

CAREY & PRATT,

*Solicitors and of Counsel.*

DISTRICT OF WISCONSIN, *ss:*

Be it remembered, that on this 24th day of May, A. D. 1865, before me, came Alanson Carey, and made oath that he is the secretary of the Milwaukee and St. Paul Railway Company, the defendant named in and which makes the foregoing answer; that he has read said answer and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

JAMES McFARLIN,

*Commissioner Circuit Court, U. S. Dist. of Wis.*

*Exhibit No.* 1.

18 District court of the United States for the district of Wisconsin.

GREENE C. BRONSON and others
*vs.*
THE LA CROSSE AND MILWAUKEE R. R. Company and others.

*Extract from the judge's opinion.*

The legislation of this State was evidently with a view of enabling railroad companies, and especially the La Crosse and Milwaukee Railroad Company, to raise money in advance, by bonds and mortgage, for the purpose of building their road and procuring rolling stock. The directors of this company were given almost unlimited license to make bonds and mortgages, payable in any manner they might deem proper, and to pledge or mortgage their property as security. By the terms of the mortgages, the rolling stock to be procured was pledged to secure the debt contracted for raising the means of its procurement. In equity those pledges should be sustained, and the persons who purchased the company's bonds, and furnished the means of the procurement of the stock, should be protected. And they also furnished the means for building the road, from which revenues have been derived, to enable the company to procure rolling stock.

From the best consideration I can give the subject, I think the rolling stock on the whole road is to be considered a fixture, and is pledged to the first mortgage of nine hundred and fifty thousand dollars, unless it can be shown affirmatively how much or what portion was procured by funds received out of the issue of land bonds, and the second mortgage bonds, or either of them. So much of the stock as can be shown to have been procured out of either of those issues, or out of the revenues of so much of the road as was built with funds arising out of those issues of bonds, respectively, will pass with the sales on said mortgages. The first mortgage is a lien on the road and fixtures from Milwaukee to Portage City. It was the first pledge of the road and fixtures to creditors. And I apprehend it is the conveyance of the franchise of the corporation granted by its charter, as it is not probable that the corporation could divide its franchise by making mortgages of several parcels of the road property. That would be creating several corporations by deed of a company, to which the legislature granted but one.

*Exhibit No. 2.*

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON *et al.*
*vs.*
LA CROSSE AND MILWAUKEE RAILroad Company and others.

*Extract from opinion of the judge on hearing exceptions and directing entry of final decree.*

In obedience to the order of reference, the masters inquired into the quantity of rolling stock covered by this mortgage. They report that forty box cars, costing thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, giving their respective numbers, were purchased with funds raised on the bonds in this mortgage. They also report that the rolling stock on the road cost $623,235 78, and that all but those box cars are covered by the first and second mortgages. The complainants except to this part of the report, and claim the whole rolling stock. They found their claim upon the grounds that the rolling stock is personal property, and that the first mortgage was not filed as a chattel mortgage, and is therefore void as to the rolling stock. And that their mortgage was the first in date, after the act of October 10, 1856, declaring rolling stock to be real property. I do not think the statute for filing chattel mortgages is applicable to this species of property in actual use upon a railroad.

The legislation of this State was evidently with a view of enabling railroad companies, and especially the La Crosse & Milwaukee Railroad Company, to raise money in advance, by bond and mortgage, for the purpose of building their roads and procuring their rolling stock. The directors of this company were given almost unlimited license to make bond and mortgage payable in any manner they might deem proper, and to pledge or mortgage their property as security. By the terms of the mortgage the rolling stock to be procured was pledged to secure the debt contracted for raising the means of its procurement. In equity those pledges should be sustained, and the persons who purchased the company's bond and furnished the means for the procurement of the stock should be protected. And they also furnished the means for building the road, from which revenues have been derived, to enable the company to procure rolling stock. This matter is fully settled as authority to this court in the case of Pennock *vs.* Coe, 23 Howard, 117. The rolling stock was procured by the company, as owners, and adapted to the road as the means of operating; and so long as it is thus used, it should be considered as fixtures, even without stated law. The first mortgage covered all the after-acquired rolling stock, except such as should be
19 proven to have been purchased with funds raised upon subsequent mortgage; to that extent those mortgages should have a superior equity. For these reasons the exception will be over-

ruled. But the decree will, in addition to the forty-box cars reported by the masters, allow to this mortgage its share of the rolling stock, purchased and procured by the receiver, costing $147,942, in proportion to the net revenues.

*Exhibit No.* 3.

District court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and Sheperd Knapp, trustees, *against* LA CROSSE AND MILWAUKEE RAILROAD Company. [Here follows the names of the defendants.] } In equity.

*United States marshal sale.*

In pursuance and by virtue of a decree made by the district court of the United States for the district of Wisconsin, on the thirteenth day of January, A. D. 1862, in the above-entitled cause, I shall sell, at public auction, at the post office, in the city and county of Milwaukee, in said district, on the twenty-fifth (25th) day of April, A. D. 1863, at 2 o'clock in the afternoon, the following-described mortgaged property, to wit:

All and singular the several tracts, pieces, or parcels of land, which now or may hereafter be or constitute the site of the roadway, turn-outs, engine-houses, workshops, and other outbuildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of the roads of said La Crosse & Milwaukee Railroad Company from Madison by way of Portage City to the St. Croix river or lake between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made, or to be built and made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been, or may hereafter be procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property which have been or may hereafter be procured for or used in connection with said roads, or either of them.

And also all and singular the rights, liberties, privileges, and franchises of said La Crosse & Milwaukee Railroad Company of every kind and description relating to said roads. Also all and singular the lands granted or intended to be granted to said railroad company, under and by virtue of an act of the Congress of the United States, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State, approved June 3d,

1856," and under or by virtue of an act of the legislature of the State of Wisconsin, approved October 11th, A. D. 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company," and to execute the trust created by an act of Congress, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," approved June 3d, 1856, so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to St. Croix river or lake, estimated to be about one million of acres of land, together with all and singular the hereditaments and appurtenances belonging, or in anywise appertaining, to the lands and real estate above mentioned and described:

The rolling stock hereinbefore mentioned is to be sold subject to the lien of mortgages executed prior to the 31st day of December, 1856, except forty box cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 369, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 406, 408; and except such proportion or share of said rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two thousand dollars and sixty-three cents, as the net revenue of the portion of railroad of the La Crosse and Milwaukee Railroad Company hereinbefore mentioned and described bears to the balance or other end of said road since the appointment of the receiver, which said forty box cars and said proportion of rolling stock purchased by the receiver are to be sold free and clear of any encumbrance whatever."

The lands hereinbefore mentioned as granted by the United States will be first sold, and if a sufficient sum shall not be realized therefrom to pay the amount adjudged to be due to the complainants for interest, together with costs, then the balance of the mortgaged property hereinbefore mentioned and described will be sold; and upon this sale the bonds secured by the mortgage described in the bill of complaint in this cause will be received in part payment of the proceeds of such sale, in the proportion which each bond, at the principal thereof for the amount thereof, according to this decree, (that is, the first nineteen hundred and ninety-one bonds at par, and the remainder at four hundred dollars on the thousand dollars,) bears to the amount of sale.

DARIUS C. JACKSON,
*U. S. Marshal.*

CARY & PRATT,
*Solicitors for Complainants.*

Milwaukee, January 17th, 1863.

*Exhibit No.* 4.

In the district court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*
} In equity.

Exceptions taken by the defendants, the Milwaukee and Minnesota Railroad Company, Lawrence G. Graham and Donald D. Scott, to the report of D. C. Jackson, esq., marshal of the United States for said district, of the sale of the mortgaged premises in this cause, reported by him to have been made on the 25th day of April, 1863, by his report filed in this court on the 27th day of April, 1863:

1st exception. For that the said report of the said marshal should not have been made to this court, but should have been made to the circuit court of the United States for this district, by order of which last mentioned court made therein in this cause, on the 10th day of January, 1863, the said marshal was authorized and directed to make the sale reported by him in his said report; this court then having no jurisdiction to order a resale of the mortgaged premises mentioned in the decree.

2d exception. For that it appears by the said report that the said marshal did not give due and sufficient public notice of such sale, is this, that the said marshal having previously made sale of the mortgaged premises under and in pursuance of the decree of this court in this cause, had no authority to resell the same, except by the order of the circuit court aforesaid. Yet the said marshal gave notice of such sale in this court only, at a time when the jurisdiction to execute the said decree was vested exclusively in the said circuit court, and gives no notice of such sale, under the said order of the said circuit court.

3d exception. For that the said marshal in his said report, reports no legal or satisfactory evidence of having given such public notice by advertisement in any newspaper in the city of New York, as required by the said decree.

4th exception. For that in and by the said report of the said marshal, it does not appear that the purchasers have paid to him the full amount of their bid reported by him.

5th exception. As to the sale of the lands ordered to be sold by the decree in this cause. For that the said marshal in and by his said report, that he hid not offer for sale, or sell any known or specified tract or tracts of land, or land by any description by which the land sold was capable of being identified, or land by any description by which a title would pass in a deed of conveyance, but did offer for sale, and sell an uncertain, vague, and undefined claim of title to all the lands granted, or intended to be granted, to the La Crosse and Milwaukee Railroad Company under the acts of Congress and of the State legislature, mentioned in the pleadings, without making it ap-

pear whether the said railroad company had acquired any and what title to any and what quantity of such lands and what lands.

6th exception. As to the sale of the lands ordered to be sold by the decree in this cause. For that the said marshal having so offered for sale, and sold such lands by a description calculated to deter bidders thereon, so sold the same for a grossly inadequate price.

7th exception. As to the sale of the railroad and its appurtenances, ordered to be sold by the said decree. For that the said marshal offered for sale and sold the said railroad and its appurtenances under a description, vague and uncertain as to the quantity and amount of the appurtenances and rolling stock appertaining to the railroad so sold, and of the encumbrances thereon, and as to the extent and nature of the franchises appurtenant to the railroad so sold.

8th exception. As to the sale of the railroad and its appurtenances, ordered to be sold by the said decree. For that the said marshal so offered for sale and sold the said railroad and its appurtenances, under a decree of this court, which does not determine or settle the franchises or right of possession to be acquired by the purchasers of the premises so to be sold, and which is too uncertain to be executed according to the established principles of equitable jurisprudence.

21 9th exception. For that the said marshal reports that he offered for sale, and sold the said railroad and its appurtenances and franchises, and the said lands granted by the said act of Congress and of the State legislature, separately; whereas the lands so sold, and the right of the said railroad company thereto, or to a great part thereof, are incident to the franchises so separately sold, and cannot pass to a purchaser unless with the franchises, and as an incident thereto.

10th exception. The said defendant further objects to any confirmation of said sale, because by rule 6 of the rules of practice for the courts of equity of the United States, prescribed by the Supreme Court of the United States, it is provided as follows: "All motions for rules or orders or other proceedings, which are not grantable, of course, or without notice, shall, unless a different time be assigned by the judge of the court, be made on a rule day and entered in the order book, and shall be heard at the rule day next after that on which the motion is made," and because no motion for order confirming said sale has been made on a rule day or on any other day assigned by the judge of said court for that purpose, and because the time prescribed by said rule for the defendant to make objections and exceptions to said report has not elapsed and will not elapse till the next rule day after the rule day on which the motion may be made according to said rule.

11th exception. That the said lands sold for only a nominal sum, in consequence of the opinion of the judge of this court hereafter printed by himself as follows:

Opinion omitted.)

MATT. H. CARPENTER,
*Solicitor for said Defendants.*

*Exhibits No. 5 and 6.*

District court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and Sheperd Knapp *against* LA CROSSE AND MILWAUKEE RAIROAD COMpany and others, defendants. } In equity.

The answer of the Milwaukee and Minnesota Railroad Company, Lawrence G. Graham, and Donald D. Scott, three of the defendants in the above-entitled cause, to the petition of the Milwaukee and St. Paul Railway Company, filed in the above-entitled cause on the 6th day of May, A. D. 1863:

These defendants, saving and reserving unto themselves all, and all manner of benefit and advantage of exceptions to the many irregularities, uncertainties, and insufficiencies of said petition, and protesting that this court has no jurisdiction to hear said petition, for answer thereunto, or unto so much and such part thereof, as is or are material to by them then answered unto, answering, say:

That they have no knowledge, information, remembrance, or belief as to whether the said Milwaukee and St. Paul Railway Company is a corporation, and can neither admit nor deny the same, but learn such petitioner to such proof in that behalf as it may be able to make.

These defendants admit that Hans Crocker is receiver of the eastern division, so called, of the Milwaukee and La Crosse Railroad, so called, but say that he was not appointed such receiver in the above-entitled cause, but was so appointed in a cause in favor of said Brown and Soutter, as complainants against the La Crosse and Milwaukee Railroad Company and others, defendants, which action was a suit in equity to foreclose a mortgage on said eastern division, and in a suit in favor of one Howard against said last-named company and others.

These defendants deny that the said mortgage mentioned in the bill of complaint in this cause, mortgaged or created a lien upon the whole franchise of said La Crosse and Milwaukee Railroad Company to use, operate, manage, and control said La Crosse and Milwaukee railroad for its entire length from the city of Milwaukee to the city of La Crosse, and deny that said mortgage is prior and superior to all or any claims, liens, or encumbrances on said eastern division, and state that said mortgage did not, in terms, nor was it intended to create any lien or encumbrance in whatever upon said eastern division of said railroad, or of the franchise of said La Crosse and Milwaukee Railroad Company to use, manage, operate, and control said eastern division, but that on the contrary thereof, the premises, as to franchises conveyed in said mortgage, are conveyed only by the following words and description, that is to say: "And all and regular the rights, liberties, privileges, and franchises of said railroad company, of every kind and description relating to said road," meaning the following roads, that is to say, from Madison by way of Portage

City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse.

And these defendants deny that the said petitioner has in any way become entitled to use, manage, or operate said eastern division of said railroad from Milwaukee to Portage, or any part thereof.

These defendants further say that the said mortgage did not convey or mortgage, and was not intended to convey or mortgage, any of the rolling stock of said La Crosse and Milwaukee Railroad
22 Company, pertaining to said eastern division, and these defendants submit that rolling stock is not a franchise; and these defendants, on information, advice, and belief, state that there is no rolling stock covered by the said mortgage, unless it be the 40 box cars mentioned in the order of the court upon the master's report.

MATT. H. CARPENTER,
*Solicitor.*

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming being first duly sworn, on oath says that he is a director of the Milwaukee and Minnesota Railroad Company, one of the defendants in the above-entitled cause, and makes this verification on its behalf: that he has heard read the foregoing answer, and knows its contents, and that the same is true, of his own knowledge.

A. FLEMING.

Subscribed and sworn to before me, this 7th day of May, A. D. 1863.

J. M. MILLER, *Clerk.*

Re-sworn to before me this 11th day of June, A. D. 1863.

EDWARD KENTZ,
*U. S. Com., Dis't Wis.*

And on the same day came the Milwaukee and Minnesota Railroad Company, and Lawrence G. Graham, and Donald D. Scott, by their solicitor, Mr. Carpenter, and filed the following, viz:

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp
*vs.*
THE LA CROSSE AND MILWAUKEE R. R. COMpany and others.

Here in court comes the said Milwaukee and Minnesota Railroad Company, Lawrence G. Graham, and Donald D. Scott, and protesting that the rights of the parties as to rolling stock is already res adjudicata between the parties to this suit, and that this court has no jurisdiction over, or right to hear and determine the said petition of the Milwaukee and St. Paul Railway Company, and protesting that a petition is not the proper proceeding to hear and determine the rights therein set forth:

Pray that, in case said court shall be of opinion that it has such jurisdiction, and that said right as to rolling stock, claimed in said petition, is not already res adjudicata as aforesaid:

That it may be referred to a master or masters to take proofs as to the matter and things set forth, and the rights claimed in and by said petition to, and report thereon.

MATT. H. CARPENTER,
*Solicitor for said defendants above named, except said La Crosse and Milwaukee Railroad Company.*

MAY 29, 1865.

23 This day came the complainant by its solicitor and filed its replication as follows, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE AND MINNESOTA RAILROAD Company *vs.* THE MILWAUKEE AND ST. PAUL RAILWAY Company and others. } Suit by supplemental bill.

The replication of the Milwaukee and Minnesota Railroad Company, complainant, to the answer of the Milwaukee and St. Paul Railway Company, defendant.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be ready to aver and prove as this honorable court shall direct, and hereby prays, as in and by his said bill he hath already prayed.

MATT. H. CARPENTER,
*Sol. for Complainant.*

JULY 13, 1865.

This day came James McFarlin, a commissioner of this court, and filed the depositions of Russell Sage, Andrew Reasoner, and Edwin H. Goodrich, taken before him in this cause.

JULY 17, 1865.

This day came James T. Soutter and Shepherd Knapp by John W. Cary, esq., their solicitor, and move the court for leave to file their answer within thirty days. Whereupon it is ordered by the

court that they have leave to file their answer or cross bill in the nature of an answer as they may be advised, within thirty days, but not to delay the hearing of this cause.

24 AUGUST, 29, 1865.

This day came the defendants James T. Soutter and Shepherd Knapp by John W. Cary, their solicitor, and filed their answer as follows, to wit:

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

The joint and several answer of James T. Soutter and Shepherd Knapp, survivors of Green C. Bronson, deceased, to the bill of complaint of the Milwaukee and Minnesota Railroad Company, complainant, against the Milwaukee and St. Paul Railway Company, William Wallace Pratt, William H. White, and James T. Soutter and Shepherd Knapp, survivors of Green C. Bronson, deceased, defendants:

These defendants, now and at all times saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as they are advised it is material or necessary for them to make answer unto, answering, deny that the La Crosse and Milwaukee Railroad Company was a corporation existing under the laws of the State of Wisconsin from the first day of January, 1850, until the twenty-first day of May, A. D. 1860, but admit and say it was such corporation from and after some time in the year 1852, and as these defendants are informed and believe still is such corporation.

And these defendants, further answering, admit and say that they have heard that a mortgage was executed by said La Crosse and Milwaukee Railroad Company to one William Barnes; that said Barnes afterwards proceeded to foreclose said mortgage by a sale under the power therein contained, without suit; that he became the purchaser of the mortgaged premises at said sale; and that he and others afterwards assumed to organize the said complainant under the provisions of the statute of the State of Wisconsin, and that by virtue of the proceedings aforesaid the said complainant assumes to be a corporation and the successor of the said La Crosse and Milwaukee
25 Railroad Company, and to have succeeded to its rights, privileges, and franchises; and these defendants have further been informed that said mortgage foreclosure and the formation of said company were fraudulent and irregular and of no force or validity, as to all of which matters they have no knowledge, and therefore neither admit or deny the same, and leave said complainant to make such proof thereof as it shall be advised.

These defendants, on information and belief, deny that said complainant is a creditor of the La Crosse and Milwaukee Railroad Company, or entitled to the rights or privileges of such creditor, or that

it has the right to collect and enforce all or any action or actions, or cause or causes of action, existing in favor of said La Crosse and Milwaukee Railroad Company.

And these defendants, further answering, admit and say, that the La Crosse and Milwaukee railroad, so called, extends from Milwaukee to La Crosse: that the eastern ninety-five miles is called the Eastern Division, and that portion thereof lying west of ninety-five miles is called the Western Division.

These defendants admit the execution of the mortgage to Francis A. Palmer, as mentioned in the bill of complaint, and that there are now outstanding bonds issued under said mortgage amounting to $875,000, and that said mortgage is a first lien upon the eastern ninety-five miles of said road, and that no proceedings have ever been had to foreclose the same.

These defendants further admit and say, that said La Crosse and Milwaukee Railroad Company, on the 31st day of December, 1856, executed and delivered to Green C. Bronson, James T. Soutter, and Shepherd Knapp, as trustees, a certain mortgage or trust deed of that date, which is called and known as the Land Grant mortgage, a copy of which is annexed to said bill as Exhibit No. 5, and that afterwards, to wit: on the 17th day of August, A. D. 1857, the said La Crosse and Milwaukee Railroad Company made and delivered to said Green C. Bronson and James T. Soutter the deed of trust attached to said bill of complaint as Exhibit No. 6.

And these defendants, further answering, say that said La Crosse and Milwaukee Railroad Company was one corporation; that its railroad was one continuous line from Milwaukee to La Crosse;
26 that all its rolling stock was purchased for the common benefit of the whole road, and out of the common funds of the company; that no portion of said rolling stock belonged, was assigned, or pertained to one division as against the other, but that it was all procured for and used on the entire length of said road from Milwaukee to La Crosse, without respect to the different divisions of the road; and that as these defendants are informed and believe all of the mortgages given by said company were intended to include, and in fact did include, all the rolling stock of the whole road belonging to said company, and it was intended by said company that said mortgages should, and they in fact did, become liens upon the whole of said rolling stock, as well that acquired before the giving of said mortgages as that subsequently acquired, in the order of time in which said mortgages were given.

And these defendants deny that in giving said mortgage to Bronson, Soutter, and Knapp, and Bronson and Soutter, it was not intended to make the Bronson and Soutter mortgage subject and inferior to the Bronson, Soutter, and Knapp mortgage, as to the rolling stock of said company: and further deny, "that neither of said mortgages describes and conveys any portion of the premises described and conveyed in the other," but on the contrary, these defendants say that it was the intention in both of said mortgages to grant and convey, and that both of said mortgages in fact did grant and convey, all

the rolling stock of said company, as well that theretofore as that thereafter acquired, and that said mortgage, so as aforesaid given to Bronson, Soutter, and Knapp, conveyed to them all the rolling stock of said company of every name and description, including all that previously, as well as that subsequently acquired by said company; and that the lien of said mortgage upon the whole of said rolling stock was prior and superior to any other rights or claims thereto, or liens thereon, made or created by said La Crosse and Milwaukee Railroad Company subsequent thereto.

These defendants, further answering, admit that Bronson, Soutter, and Knapp filed their bill to foreclose said mortgage on the 5th day of December, 1859, and that such proceedings were thereupon had that a final decree of foreclosure and sale was made therein on the 13th day of January, 1862; and these defendants also admit that said Bronson and Soutter, on the 9th day of December, 1859, filed their bill to foreclose the mortgage given to them, as stated in said
27 bill of complaint.

And these defendants, further answering, admit on information and belief, that all the parties made defendants in said foreclosure suits had, or were supposed to have, some lien upon or interest in said mortgaged premises, and that while all necessary parties were made defendants, there were many proper parties having subsequent liens, who were not so made defendants, and these defendants admit that said two foreclosure suits were independent suits.

These defendants, further answering, say that the mortgage so as aforesaid given to said Bronson, Soutter, and Knapp described said rolling stock, in these words: "All and singular the locomotives, engines, and other rolling stock, and all other equipments of every kind and description which have already been, or may hereafter be, procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property which have been, or may hereafter be, procured for or used in connection with, said roads, or either of them;" and the same description was contained in the said mortgage to Bronson and Soutter, and the bill of complaint in each of said foreclosure suits claimed the whole of the rolling stock, materials, tools, implements, utensils, and other personal property which had been procured for or used in connection with said road by said La Crosse and Milwaukee Railroad Company up to the time of filing said bills of complaint.

And these defendants, further answering, say that the rolling stock described in the Barnes mortgage was the same rolling stock described in the Bronson, Soutter, and Knapp mortgage, and not other or different, and that the description thereof in said Barnes mortgage is the same as the description contained in said Bronson, Soutter, and Knapp mortgage, and in the same words.

That the said rolling stock so described was the rolling stock on the said road on the 11th day of June, 1860, and the same rolling stock, and all the rolling stock of which Hans Crocker, the receiver, took possession on said 11th day of June, 1860, and that said rolling stock so taken possession of by said Hans Crocker was the rolling

stock, and all the rolling stock of the La Crosse and Milwaukee rail-
road, and that it had all been procured for and used on the
28 said La Crosse and Milwaukee railroad, on its entire length
from Milwaukee to La Crosse; that all of said rolling stock had been purchased from the common funds of said company, and had never been assigned or attached to one division of said road as against the other; and that if said rolling stock had, by virtue of the statute of Wisconsin or otherwise, become attached to said railroad as a fixture or a part of the realty, then that it had become so attached to the whole road pro rata mile per mile, according to the value of said stock, and not to one division of said road as against the other.

These defendants admit that on the 11th day of March, 1861, said district court made an order of reference to the masters named in said bill of complaint, but these defendants deny that said order was made for the purpose of ascertaining what and what amount of rolling stock was included and encumbered by the said mortgage to Bronson, Soutter, and Knapp, but say that it was for the purpose of ascertaining what part of the rolling stock could be shown affirmatively to have been purchased by the proceeds of the bonds issued under the said mortgage so as aforesaid given to said Bronson, Soutter, and Knapp, and to said Bronson and Soutter, and that said district court deemed said inquiry material for the reason that said court held that each of the mortgages given by said La Crosse and Milwaukee Railroad Company covered and included the whole rolling stock on the whole of said road, and that said several mortgages as to said rolling stock would have priority, according to their respective dates, except that so far as it could be affirmatively shown that any specified portion of said rolling stock had been purchased by the proceeds of either of the mortgages subsequent to the first, and that in such case said subsequent mortgage would, as to such specified portion of said rolling stock, have a lien superior to the lien of the mortgages prior in date; that said district court, on the said 11th day of March, 1861, and immediately before making said order of reference, delivered a written opinion in said foreclosure suit, an extract from which is hereto annexed, marked as Exhibit No. 1, enunciating the principles above-stated as the rule that was to govern said masters in their examination and report on said matter, and limiting their inquiry on that
subject to the single point as to whether it should be affirma-
29 tively shown to them that any of said rolling stock had been purchased by the proceeds of the bonds secured by mortgages given either to Bronson, Soutter, and Knapp, or to Bronson and Soutter; that upon examination said masters ascertained that said La Crosse and Milwaukee Railroad Company had no record showing what was done with the proceeds of the bonds issued under said mortgages, but that the said proceeds went into the common treasury of said company, and that all of said rolling stock was purchased with the funds taken from said common treasury, and for that reason it was impossible to show affirmatively that any particular or specified portion of said rolling stock was purchased by the proceeds on said bonds, except the said forty box cars, specially mentioned if said

master's report, which said forty box cars were purchased on the note of the company, indorsed by Samuel Brown and another, and at the time of making such indorsement thirty of said land grant bonds were placed in the hands of said indorsers as security for their indorsement; that said company failed to pay said note, and said indorsers subsequently settled the same by transferring to the holder thereof said thirty bonds, said masters therefore reported in accordance with the opinion so as aforesaid given; that said forty box cars were covered by and included in the mortgage executed to Bronson, Soutter, and Knapp, because they were purchased with land grant bonds. These defendants admit that an exception was filed by the complainants in that suit, which was overruled by the court, but these defendants insist that said exception to said report was for the purpose of claiming that said land grant mortgage was a first lien upon all of said rolling stock, prior and superior to the said Palmer mortgage mentioned in said bill of complaint, for the reason that at the time said Palmer mortgage was made there was no law in the State of Wisconsin declaring rolling stock a fixture, and that said Palmer mortgage was never filed so as to make it valid as a mortgage of personal property, and said exception was so considered and treated by the counsel, and the court, as will more fully appear by reference to the written opinion of said district court, delivered on overruling the same, an extract from which is hereto annexed as Exhibit No. 2.

These defendants further admit that on the 13th day of January, 1862, said district court, in said land grant foreclosure suit, made a final decree therein, foreclosing said western division mortgage, and decreeing a sale of the mortgaged premises in the said mortgage described, but expressly denies that said decree declares that all the said rolling stock on the whole of said road, except the said forty box cars and the said proportion of rolling stock purchased by the receiver, belonged to, and was covered by the mortgages on the eastern division.

These defendants show to this court that said decree, as understood, construed, and interpreted by them, expressly ordered, adjudged, and decreed that all the rolling stock of said La Crosse and Milwaukee Railroad Company that had been procured for, or used on, said road, should be sold under and by virtue thereof, and after so directing the sale of all of said stock, specially mentioned the said forty box cars and the proportion of rolling stock purchased by the receiver, being a part of the first mentioned, and the part which the previous adjudication of the court had determined said land grant mortgage was the first lien upon, and then dtrected or adjudicated that all the balance of said rolling stock first named and directed to be sold is subject to mortgages prior in date to the land grant mortgage, and that said court did decree and order the sale of all the rolling stock on said road purchased by the La Crosse Company, and the proportion of the stock purchased by the receiver, belonging to the western division, and that said forty box cars, and said proportion of rolling stock purchased by the receiver, should be sold.

free and clear from all encumbrance, and that all the remainder of said rolling stock on said road, when the receiver took possession thereof, should be sold, subject to mortgages given by the La Crosse Company, prior in date to the said land grant mortgage, and that with that understanding thereof these defendants caused the same to be executed by the marshal of said district of Wisconsin, by a sale of said premises, that said marshal advertised said premises for sale,
and in his advertisement set out the mortgage premises in
31 hac verba, as contained in the mortgage, and followed the same with this explanation, to wit:

"The rolling stock hereinbefore mentioned is to be sold subject to the lien of mortgages executed prior to the 31st day of December, A. D. 1856, except forty box cars numbed 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408; and except such proportion or share of said rolling stock purchased and procured by the receiver, amounting to one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenue of the portion of railroad of the La Crosse and Milwaukee Railroad Company, hereinbefore mentioned and described, bears to the balance or other end of said road since the appointment of the receiver, which said forty box cars and said proportion of rolling stock purchased by the receiver, are to be sold free and clear of any encumbrance whatever."

A copy of which advertisement is hereto attached and made a part of this answer as Exhibit No. 3.

That in virtue of said decree and in pursuance of said advertisement, which was read at full length on the sale, said mortgaged premises were sold as advertised on said 25th day of April, 1863; that afterwards, and on the 28th day of April, 1863, the said marshal filed his report of said sale with a printed copy of said advertisement of sale thereto attached, a copy which report, without the advertisement thereto attached is attached to said complainant's bill as Exhibit No. 4. That in and by said report said marshal reported as follows, to wit:

"And I then offered for sale, and sold in like manner, the balance of the premises and property described in said decree, as follows, to to wit: All and singular the several tracts, pieces, or parcels of land which constitute the site of the roadways, turnouts, engine houses, workshops, depots, and other buildings, and all the other lands and real estate which constitute part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between townships 25 and 31, and from Portage City to La Crosse, and also all and singular the superstruction of said roads,
and all the engine houses, workshops, depots, and other
32 buildings, and all the other improvements on or pertaining to said roads, and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have been procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils,

and other personal property which have been procured for or used in connection with said roads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company, of every kind and description relating to said roads, (of said rolling stock, forty box cars, numbered respectively 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 363, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and such proportion or share of rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenues of the portion of the road covered by the aforesaid mortgage bear to the balance or other end of said road, was sold free and clear of all lien or encumbrance, but the remainder of the above mentioned rolling stock was sold subject to the lien of mortgages prior in date to the above mentioned, given by said La Crosse and Milwaukee Railroad Company,) together with the tolls, rents, and income to be had or levied therefrom, and all corporate or other rights, franchises, and privileges of the said company of, in, and to or concerning the same, being all the property, real and personal, described in the said mortgage, (except the lands therein mentioned granted by Congress to the State of Wisconsin,) and all and singular the privileges, hereditaments, and appurtenances to the same belonging, or in any wise appertaining, situate, lying, and being in the State of Wisconsin, which was bid off by William Wallace Pratt and William H. White for the sum of two million six hundred and seventy-five thousand dollars, ($2,675,000,) they being the highest and best bidders, and that being the highest and best bid made for the premises last above described."

That said report was excepted to by the complainants and other parties to said foreclosure suit, and after hearing said exceptions said district court overruled the same, and on the 5th day of May,
33 1863, confirmed said report as made. That the purchasers at said sale thereupon formed the defendant, Milwaukee and St. Paul Railway Company, under and in pursuance of the statutes of the State of Wisconsin, and assigned and transferred to it all the mortgaged premises so as aforesaid purchased by them. And that afterwards, and on the 6th day of May, 1863, said defendant, Milwaukee and St. Paul Railway Company, filed its petition in said district court, setting forth its right to said property by virtue of the proceedings in said foreclosure suit, and asking to be let into the possession thereof; that said application was resisted by the complainants upon the ground that the said defendant, Milwaukee and St. Paul Railway Company, had not acquired the title to the said roling stock by virtue of the said foreclosure proceedings, and the said district court, after hearing the said complainants and the said Milwaukee and Minnesota Railroad Company thereon, on the 12th day of June, 1863, made an order in said foreclosure suit, as follows, to wit:

"In consideration of the said petition of the Milwaukee and St. Paul Railway Company, and of the arguments of counsel, it is ordered

by the court that there be delivered over to the said Milwaukee and St. Paul Railway Company all and singular the railroad between the City of La Crosse and Portage City, its road-bed and track, with its depots, station houses, and all other property belonging to said railroad between the said points, and the forty box cars mentioned and described in the decree, and also the share or proportion of the rolling stock and personal property purchased by the receiver, as mentiond in the decree, and also subject to other or previous liens or claims, the possession of the rolliug stock on hand when the receiver took the same under the order of the court; and it is further ordered by the court that the said receiver be, and hereby is, discharged as such from the management and control of the said western division of said railroad, under appointment in this case; subject, however, to the order made in this case, and in the other cases in which he was appointed, or may hereafter be appointed."

That under and by virtue of said order the said receiver delivered to said Milwaukee and St. Paul Railway Company said western
34 division of said railroad, said forty box cars, and said proportion of rolling stock purchased by said receiver, together with all the other rolling stock on said road when said receiver took possession of said road under his appointment as receiver; that said defendant, Milwaukee & St. Paul Railway Company, so received the possession thereof on the 13th day of June, 1863, and from thence hitherto has held possession thereof as owner under the purchase so as aforesaid made, the confirmation thereof and the said order of court, which said order is now in full force and unreversed.

And these defendants submit and insist, that by the proceedings of said court on said petition of said Milwaukee and St. Paul Railway Company, the said answers of the Milwaukee and Minnesota Railroad Company thereto, and the order and decree of the court thereon, the said complainant is estopped from setting up or claiming in this action, while said order remains unreversed, any right, title, claim, or interest of, in, or to said rolling stock so on said railroad on the 11th day of June, 1860, when said receiver took possession of the same. And these defendants claim the same benefit thereof by this answer that they might or could have had had they pleaded the same in bar of the said complainants, said bill of complaint.

And these defendants, further answering, say that the amount of the decree in the said foreclosure suit of Bronson, Soutter, and Knapp, on the 25th day of April, 1863, was $3,921,291; that the proceeds of said marshal's sale were $2,800,000, which amount deducted from the amount of said decree at the date of said sale, left the sum of $1,129,291, of said decree unpaid, and that said last-mentioned sum, together with interest thereon since the 25th day of April, 1863, still remains unpaid, and secured by said bonds issued under said mortgage, so as aforesaid given to said Bronson, Soutter, and Knapp. And although these defendants were of the opinion and in the full belief that said decree of foreclosure did cover and include all the rolling stock on said La Crosse and Milwaukee railroad on the 11th day of June, 1860, of which the receiver took possession, and that the same was sold by the marshal

under said decree and purchased by said Pratt and White, and
35 afterwards delivered to said Milwaukee and St. Paul Railway Company in pursuance of said purchase, and under and in pursuance of the order of said district court in said foreclosure case, yet these defendants, after being informed of the decision of the supreme court, at the last term of said court, on the appeal of the complainant in this cause, caused an appeal to be taken in said foreclosure suit, with a view of having said decree amended so as to cover and include said rolling stock, if it does not already cover and include it, and that said appeal is now pending and undetermined in said supreme court; and these defendants say and insist on information and belief, that said rolling stock was covered by and included in the mortgage so as aforesaid given to said Bronson, Soutter, and Knapp, that it should have been included in and covered by the decree entered in said foreclosure case, and sold by the said marshal, and that if it was not so included in and covered by said decree of foreclosure, that it was a manifest error and mistake of said district court, which will be corrected by said supreme court on said appeal, and that inasmuch as this suit is a proceeding supplemental to said original foreclosure suit, this court, if of the opinion that said rolling stock was not included in and covered by said decree, should not at this time proceed to adjudge and determine the right and ownership of said rolling stock, but that it should retain possession thereof by its receiver until said supreme court shall finally have passed upon said appeal in said foreclosure suit, in order that the same may be adjudged to be sold to satisfy the amount so remaining due and unpaid on said bonds so as aforesaid issued under said mortgage to said Bronson, Soutter, and Knapp, in case said supreme court shall adjudge and determine that said rolling stock was covered by and included in the said mortgage.

And these defendants, further answering on information and belief, admit that no proceedings were ever taken to ascertain the proportion which the net earnings of the western division bore to the eastern division, that the exhibits attached to said bill are substantially correct, that Hans Crocker was appointed receiver as charged,
36 and that an appeal was taken from the decree entered in the second mortgage case, and that it was reversed.

And these defendants, further answering, say there is a defect of parties in the said complainants' bill of complaint, that from the allegations and statements of said bill, and the exhibits thereto attached, it appears and is made manifest that Francis A. Palmer, who is living the city of New York, as trustee of the bondholders, secured by the mortgage executed to him, and James T. Soutter, who is living in the city of New York, as survivor of Green C. Bronson, as trustee for the bondholders, secured by the mortgage executed to said Bronson and Soutter, severally have claims upon and interest in said rolling stock, and the franchises of said La Cross and Milwaukee Railroad Company, prior and superior to the said pretended claims of the said complainant, and that it is necessary that said Francis A. Palmer and said James T. Soutter, survivors aforesaid, should be made parties

and brought before this court, before the rights of this defendant can be finally and definitely settled in respect to said rolling stock, franchises, and property.

And these defendants further show that the city of Milwaukee is a necessary and material party to the said complainants' bill; that said city holds two mortgages on said rolling stock, property, and franchises, one given by the La Crosse and Milwaukee Railroad Company, and the other by the Milwaukee, Fond du Lac, and Green Bay Railroad Company, with which last named company said La Crosse and Milwaukee Railroad Company afterwards consolidated, and assumed the payment of said mortgage; that both of said mortgages were given to said city, and became liens on said rolling stock, property, and franchises, prior to said Barnes mortgage in said bill of complaint mentioned, and are now a valid and subsisting lien thereon to the extent of three hundred and fourteen thousand dollars.

And these defendants further submit and insist that said La Crosse and Milwaukee Railroad Company is a necessary and material party to said plaintiff's bill of complaint, on the facts stated in said bill and this answer.

37 And these defendants further show that on the 26th day September, A. D. 1857, the said La Crosse and Milwaukee Railroad Company mortgaged the whole of said rolling stock, property, and franchises, mentioned in said bill of complaint to J. Albert Helfenstien, who is living at the city of Milwaukee, as trustee for the security of the holders of bonds, to be issued under said mortgage, and that afterwards, in September, in the year 1857, about three hundred and eighty thousand dollars of bonds were issued under said mortgage, which said bonds, with the interest thereon, are now outstanding and secured by said mortgage, which said mortgage is a valid and subsisting lien thereon, prior and superior to the claims of said complainant, and that said J. Albert Helfenstein, as such trustee, is a necessary and material party to said bill of complaint.

And these defendants therefore submit and insist that said Francis A. Palmer, city of Milwaukee, James T. Soutter, survivor of Green C. Bronson, J. Albert Helfenstien, and the La Crosse and Milwaukee Railroad Company, are each and all of them necessary and material parties to said bill of complaint, either as complainants or defendants, and that a final and complete determination of the matters contained in said bill cannot be had without said parties are brought before said court, and these defendants claim the same benefit of this answer as though they had demurred to said bill of complaint.

And these defendants, further answering, admit the death of the Green C. Bronson, as stated in said bill of complaint, without that any other matter or thing, material or necessary for these defendants to make answer unto, are not herein or hereby well or sufficiently aswered unto, confessed, or avoided, traversed or denied, is true, to the knowledge or belief of these defendants, all of which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be

hence dismissed with their reasonable costs and charges in that behalf most wrongfully sustained.

JAMES T. SOUTTER,
By JOHN W. CARY, *his Solicitor.*
SHEPPERD KNAPP,
By JOHN W. CARY, *his Solicitor.*
JOHN W. CARY,
*Solicitor and of Counsel for Defendants Soutter and Knapp.*

38 DISTRICT OF WISCONSIN, *ss:*

On the 29th day of August, A. D. 1865, before me personally appeared John W. Cary, the solicitor above named, and made oath that he is the solicitor of the defendants James T. Soutter, and Shepherd Knapp, and that he was one of the solicitors of Bronson, Soutter, and Knapp in the foreclosure suit named in the foregoing answer, and that he had the principle charge of the same; that said Soutter and Knapp are neither of them residents of the State of Wisconsin, and are neither of them now within this State; that said defendants had no personal knowledge or oversight of the proceedings in said foreclosure suit, but that said deponent had personal knowledge and cognizance of said proceedings; that he has read the foregoing answer subscribed by said defendants by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated be on the information and belief of said defendants, and as to those matters he believes it to be true.

A. SCOTT SLOAN, *Clerk.*

*Exhibit No.* 1.

39 District court of the United States for the district of Wisconsin.

GREENE C. BRONSON and OTHERS
*vs.*
THE LA CROSSE AND MILWAUKEE R. R. Company and others.

Extract from the judge's opinion in western division case:

The legislation of this State was evidently with the view of enabling railroad companies, and especially the La Crosse and Milwaukee Railroad Company, to raise money in advance, by bonds and mortgage, for the purpose of building their road and procuring rolling stock. The directors of this company were given almost unlimited license to make bonds and mortgages, payable in any manner they might deem proper, and to pledge or mortgage their property as security. By the terms of the mortgages the rolling stock to be procured was pledged to secure the debt contracted for raising the means of its procurement. In equity those pledges should be sustained and the persons who purchased the company's bonds and furnished the means of the procurement of the stock should be protected; and they also

furnished the means for building the road, from which revenues have been derived to enable the company to procure rolling stock.

From the best consideration I can give the subject, I think the rolling stock on the whole road is to be considered a fixture, and is pledged to the first mortgage of nine hundred and fifty thousand dollars, unless it can be shown affirmatively how much or what portion was procured by funds received out of the issue of land bonds, and the second mortgage bonds, or either of them. So much of the stock as can be shown to have been procured out of either of those issues, or out of the revenues of so much of the road as was built with funds arising out of those issues of bonds respectively, will pass with the sales on said mortgages. The first mortgage is a lien on the road and fixtures from Milwaukee to Portage City. It was the first pledge of the road and fixtures to creditors. And I apprehend it is the conveyance of the franchise of the corporation granted by its charter, as it is not probable that the corporation could divide its franchise by making mortgages of several parcels of the road property. That would be creating several corporations by deed of a company, to which the legislature granted but one.

*Exhibit No.* 2.

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON *et al.*
*vs.*
LA CROSSE AND MILWAUKEE RAILROAD Company and others.

Extract from opinion of the judge on hearing exceptions and directing entry of final decree in western division case:

In obedience to the order of reference, the masters inquired into the quantity of rolling stock covered by this mortgage. They report that forty box cars, costing thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, giving their respective numbers, were purchased with funds raised on the bonds in this mortgage. They also report that the rolling stock on the road cost $623,235 78, and that all but those box cars are covered by the first and second mortgages. The complainants except to this part of the report, and claim the whole rolling stock. They found their claim upon the grounds that the rolling stock is personal property, and that the first mortgage was not filed as a chattel mortgage, and is therefore void as to the rolling stock. And that their mortgage was the first in date, after the act of October 10, 1856, declaring rolling stock to be real property. I do not think the statute for filing chattel mortgages is applicable to this species of property in actual use upon a railroad.

The legislation of this State was evidently with a view of enabling railroad companies, and especially the La Crosse and Milwaukee Railroad Company, to raise money in advance, by bond and mortgage,

for the purpose of building their roads and procuring their rolling stock. The directors of this company were given almost unlimited license to make bond and mortgage payable in any manner they might deem proper, and to pledge or mortgage their property as security. By the terms of the mortgage the rolling stock to be procured was pledged to secure the debt contracted for raising the means of its procurement. In equity those pledges should be sustained and the persons who purchased the company's bond and furnished the means for the procurement of the stock should be protected. And they also furnished the means for building the road, from which revenues have been derived, to enable the company to procure rolling stock. This matter is fully settled as authority to this court in the case of Pennock *vs.* Coe, 23 Howard, 117. The rolling stock was procured by the company, as owners, and adapted to the road as the means of operating; and so long as it is thus used, it should be considered as fixtures, even without stated law. The first mortgage covered all the after acquired rolling stock, except such as should be proven to have been purchased with funds raised upon subsequent mortgage; to that extent those mortgages should have a superior equity. For these reasons the exception will be overruled. But the decree will, in addition to the forty box cars reported by the masters, allow to this mortgage its share of the rolling stock purchased and procured by the receiver, costing $147,942, in proportion to the net revenues.

*Exhibit No.* 3.

District court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and Sheperd Knapp, trustees,
*against*
LA CROSSE AND MILWAUKEE RAILROAD COMPANY. [Here follows the names of the defendants.] } In equity.

*United States marshal sale.*

In pursuance and by virtue of a decree made by the district court of the United States for the district of Wisconsin, on the thirteenth day of January, A. D. 1862, in the above-entitled cause, I shall sell, at public auction, at the post office, in the city and county of Milwaukee, in said district, on the twenty-fifth 25th) day of April, A. D. 1863, at 2 o'clock in the afternoon, the following described mortgaged property, to wit:

All and singular the several tracts, pieces, or parcels of land, which now or may hereafter be or constitute the site of the roadway, turnouts, engine houses, workshops, and other outbuildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of the roads of said La Crosse and Milwaukee Railroad Company from Madison by way of Portage City to the St.

Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, whether now made or to be made hereafter, and all the engine houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made, or to be built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said roads or either of them, and all the materials, tools, implements, utensils, and other personal property which have been or may hereafter be procured for or used in connection with said roads or either of them.

And also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description relating to said roads. Also all and singular the lands granted or intended to be granted to said railroad company under and by virtue of an act of the Congress of the United States, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," approved June 3d, 1856, and under or by virtue of an act of the legislature of the State of Wisconsin, approved October 11th, A. D. 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company," and to execute the trust created by an act of Congress, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," approved June 3d, 1856, so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to St. Croix river or lake, estimated to be about one million of acres of land, together with all and singular the hereditaments and appurtenances belonging or in any wise appertaining to the lands and real estate above mentioned and described:

"The rolling stock hereinbefore mentioned is to be sold subject to the lien of mortgages executed prior to the 31st day of December, 1856, except forty box cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 252, 354, 356, 358, 360, 362, 364, 366, 368, 369, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408; and except such proportion or share of said rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two thousand dollars and sixty-three cents, as the net revenue of the portion of railroad of the La Crosse and Milwaukee Railroad Company hereinbefore mentioned and described bears to the balance or other end of said road since the appointment of the receiver, which said forty box cars and said proportion of rolling stock purchased by the receiver are to be sold free and clear of any encumbrance whatever."

The lands hereinbefore mentioned as granted by the United States will be first sold, and if a sufficient sum shall not be realized therefrom to pay the amount adjudged to be due to the complainants for

interest, together with costs, then the balance of the mortgaged property hereinbefore mentioned and described will be sold; and upon this sale the bonds secured by the mortgage described in the bill of complaint in this cause will be received in part payment of the proceeds of such sale, in the proportion which each bond, at the principal thereof for the amount thereof, according to this decree, (that is, the first nineteen hundred and forty-one bonds at par, and the remainder at four hundred dollars on the thousand dollars,) bears to the amount of sale.

DARIUS C. JACKSON,
*U. S. Marshal.*

CARY & PRATT,
*Solicitors for Complainants.*

41 SEPTEMBER 20, 1865.

This day came the defendants, James T. Soutter and Shepherd Knap, and the Milwaukee and St. Paul Railway Company, by John W. Cary, their solicitor, and on motion, ordered that said James T. Soutter and Shepherd Knapp have leave to amend their answer on file, and to file a cross bill; and further ordered that the Milwaukee and St. Paul Railway Company have leave to amend their answer on file: provided, however, that this order and the proceedings to be had under the same shall not delay the hearing of this cause.

And came the said defendants, James T. Soutter and Shepherd Knapp, survivors, &c., by John W. Cary, their solicitor, and filed their cross bill as follows, to wit:

42 To the judges of the circuit court of the United States for the 9th circuit and district of Wisconsin.—In equity.

James T. Soutter and Shepherd Knapp, of New York, and citizens of the State of New York, survivors of Greene C. Bronson, deceased, bring this, their bill, against the Milwaukee and Minnesota Railroad Company, a corporation organized under the laws of the State of Wisconsin. And thereupon your orators complain and say:

That on the 10th day of August, 1864, thes aid Milwaukee and Minnesota Railroad Company exhibited its supplemental bill of complaint in this honorable court against your orators and William Wallace Pratt, William H. White, and the Milwaukee and St. Paul Railway Company and thereby set forth that said Milwaukee and Minnesota Railroad Company was a corporation formed under the laws of the State of Wisconsin, on the foreclosure of a mortgage given by the La Crosse and Milwaukee Railroad Company on the 21st day of June, 1858, on the entire road, franchises, and property of said company, and that by virtue of said foreclosure, said Milwaukee and Minnesota Railroad Company had succeeded to all the rights, prvileges, franchises, and property which were of the La Crosse and Milwaukee Railroad Company on the said 21st day of June, 1858, and a copy of said mortgage was attached to said bill as exhibit.

That said supplemental bill further set forth that said La Crosse and Milwaukee Railroad Company, on the 31st day of December, 1856, executed to your orators and Greene C. Bronson, since deceased, as trustees, a certain mortgage or deed of trust wherein said railroad company conveyed to your orators and said Greene C. Bronson, as such trustees, the railroad of said company from Madison by way of Portage City to the St. Croix river or lake, and from Portage City to La Crosse, together with all the rolling stock procured by said
43 company or used on said roads, or either of them, to secure the payment of $10,000,000 of bonds to be issued by said company, which amount was afterwards reduced to four millions of dollars; that your orators, with said Greene C. Bronson, now deceased, on the 5th day of December, 1859, exhibited their bill of complaint in the district court of the United States for the district of Wisconsin, against the said Milwaukee and Minnesota Railroad Company and others to foreclose said mortgage so given by said La Crosse and Milwaukee Railroad Company, on the 31st day of December, 1856, copies of which said mortgage and bill of complaint were attached to said supplemental bill of complaint; that such proceedings were had therein, that a final decree of foreclosure and sale was made in said cause on the 13th day of January, 1862, a copy of which said decree was thereto attached, and that a sale of the mortgaged premises was made on the 25th day of April, 1863, on said decree to said Pratt and White, who thereupon organized the Milwaukee and St. Paul Railway Company, and transferred to it the property and premises so purchased; that said supplemental bill further set forth that said mortgage and decree did not cover and include the rolling stock on said road on the 11th day of June, 1860, when Hans Crocker, the receiver appointed in said foreclosure suit, took possession of said road, under his appointment as receiver; but that said Milwaukee and St. Paul Railway Company had by order of the said district court obtained possession thereof, and claimed the same as owner under said foreclosure and sale. And said supplemental bill then, among other things, prayed that it might be declared by the decree of this court that said Milwaukee and Minnesota Railroad Company was the owner of all the rolling stock that was on the whole La Crosse and Milwaukee railroad at the time of the appointment of the receiver, except forty box cars particularly mentioned and described, and that an account might be taken of the use of said rolling stock by said Milwaukee and St. Paul Railway Company, and that said last named company might be enjoined from using or in any manner interfering with said rolling stock, and for general relief.

That process of subpœna was issued out of and under the seal of this honorable court, and such proceedings had that the defendants named in said supplemental bill of complaint appeared in said action, and the same is now pending and undetermined in this court as by the said bill, and other pleadings and proceedings in the said
44 cause now remaining filed as of record in this honorable court, reference being thereunto had, will more fully appear.

Your orators further show that, as they were advised and believed, and as they now believe, said mortgage so as aforesaid given by said

La Crosse and Milwaukee Railroad Company to your orators, and Greene C. Bronson, as trustees, on the 31st day of December, 1856, was intended to cover and include, and did in fact cover and include, all of the locomotives, cars, engines, tools, and personal property which the said La Crosse and Milwaukee Railroad Company then had, or which they might thereafter acquire, and that it did in fact cover and include, and was intended to cover and include, all the rolling stock and equipments which were on the road of said company on the eleventh day of June, 1860, of which the receiver took possession; but that after the giving of said mortgage said company became embarrassed in its financial operations and some doubt and apprehension were felt by the bondholders under said mortgage as to whether said mortgage did cover and include all the iron, locomotives, cars, engines, tools, and other personal property belonging to said company, and in order to solve said doubt, and to secnre said property to the bondholders holding bonds issued under the mortgage of December 31st, 1856, so as aforesaid executed, application was made to said La Crosse and Milwaukee Railroad Company to execute a supplemental mortgage thereon to your orators and said Greene C. Bronson, as such trustees as aforesaid, for the further security of said bonds; that in pursuance of said request and of the covenants and agreements contained in said indenture of mortgage of the date of December 31st, 1856, so as aforesaid executed, said La Crosse and Milwaukee Railroad Company did, on the fourth day of September, in the year 1857, by resolution of its board of directors, authorize and direct the execution of such supplemental mortgage, and afterwards, and on the same day, said La Crosse and Milwaukee Railroad Company, in pursuance of the authority so given, and in consideration of the premises and of one dollar to it in hand paid by said trustees, did grant, bargain, sell, convey, and confirm unto your orators and the said Greene C. Bronson, as trustees as aforesaid, all and singular, about eleven thousand tons of iron rails, being all the iron rails purchased for and belonging to the said company and lying at Milwaukee and elsewhere along the line of the road of said company, or wherever the same or any portion thereof might be, and not actually laid down in the track thereof, and all and singular the locomotives, cars, engines, tools, materials, lumber, office furniture, and personal property of every description belonging to the said company wherever the same might be. To have and to hold the same to said trustees, their successors, and upon the like trusts, terms, and conditions as are in the said mortgage or trust deed of December 31st, 1856, contained, with all the powers and authority therein granted, which said mortgage or deed of trust so as aforesaid executed was afterwards, and on the fifth day of September, A. D. 1857, duly recorded in the office of the secretary of state of the State of Wisconsin as a mortgage, a copy of which said mortgage and the resolutions passed by the board of directors of said La Crosse and Milwaukee Railroad Company authorizing the execution thereof are hereto attached as exhibit.

That on the said 4th day of September, 1857, said La Crosse and Milwaukee Railroad Company was the owner and in possession of

about eleven thousand tons of iron rails, and of all the locomotives, cars, engines, tools, and personal property mentioned and described in the said supplemental bill of complaint, of which Hans Crocker, esq., took possession as receiver of said La Crosse and Milwaukee railroad on the 11th day of June, 1860, and that in and by said last mentioned mortgage or deed of trust, the whole of said iron, locomotives, cars, engines, tools, and personal property were conveyed to said trustees as security for the payment of the bonds issued under the mortgage or deed of trust of the date of December 31st, 1856, aforesaid. That said iron rails were afterwards laid in the track of said railroad, a part thereof on the eastern division and the remainder on the western division, and said rolling stock and other property was, from the giving of said mortgage until it was taken possession of by said receiver, used on said road from Milwaukee to La Crosse, and that said mortgage is now and ever since has been a lien and encumbrance thereon to the full amount of said bonds now remaining unpaid.

Your orators further show, that by the mistake or inadvertence of the counsel who drew and prepared the original bill of foreclosure, and without the knowledge or information of your orators, said mortgage or deed of trust of September 4th, 1857, was not pleaded or set out in the said bill of foreclosure, and that said suit progressed to a decree and sale without any reference to said mortgage or deed of trust, as your orators are informed and believe, and without
46 the knowledge or information of your orators, and under the impression that the mortgage or deed of trust of December 31st, 1856, covered and included all the rolling stock on said road, when the receiver took possession of the same on the 11th day of June, 1860.

And your orators further show that the amount of the decree in the said foreclosure suit of Bronson, Soutter & Knapp, on the 25th day of April, 1863, was the sum of three million nine hundred and twenty-one thousand two hundred and ninety-one dollars; that the proceeds of said foreclosure sale amounted to the sum of twenty-eight hundred thousand dollars, which sum deducted from the amount of said decree at the date of said sale, left the sum of one million one hundred and twenty-nine thousand two hundred and one dollars of said decree unpaid, and that said last mentioned sum, together with interest thereon from the 25th day of April, 1863, still remains due and unpaid on said bonds so as aforesaid issued under the mortgage or deed of trust bearing date December 31st, 1856, and is secured by the mortgage or deed of trust of September 4th, 1857, above set forth.

And your orators further show that said mortgage or deed of trust so as aforesaid given, and bearing date September 4th, 1857, is now in full force, unsatisfied and uncancelled, and that it has never been foreclosed, or any proceedings at law had to collect the same, or the bonds thereby secured, except as above set forth.

And your orators insist that under and by virtue of the mortgage or deed of trust of September 4th, 1857, your orators were entitled to the possession, control, and use of said mortgaged property, and

to have said mortgage or deed of trust foreclosed, and out of the proceeds thereof to pay and satisfy said bonds, or so much thereof as said proceeds will pay and satisfy.

Your orators therefore solicit the aid of this court to compel said defendant true, full, and perfect answer to make to all and singular the statements and charges above set forth, (and answer under oath from said defendant being hereby waived pursuant to the statute,) according to the best of its knowledge, information, and belief, and that all the rolling stock on the said road when the receiver took possession of the same, on the 11th day of June, 1860, as above stated, may be declared and decreed covered by, included in, and subject to the trusts of the said mortgage or deed of trust of the 31st
47 day of December, 1856, by force and operation of the said mortgage or deed of trust of the 4th day of September, 1857, and that the said defendant may be decreed to pay to said complainant the amount so remaining due and unpaid on said bonds, with the arrears of interest now due or hereafter to become due and payable thereon, together with the costs and charges in this behalf expended, by a day to be appointed by this court, and in default thereof that said defendant above named, and all persons claiming and to claim under it, or otherwise, may be foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part thereof, with the appurtenances, and may deliver over unto said complainants all deeds, demises, and writings relating to or concerning the same; and that all and singular said mortgaged premises, with the appurtenances, may be sold under the decree of this court, and that out of the moneys arising from the said sale thereof they may be paid the principal sum due on said bonds and mortgage, and all interest money due and to become due thereon, together with all costs and charges by them in this behalf sustained, and that until such foreclosure sale a receiver may be appointed to take possession and control of said mortgaged property, and collect the rents, toll, and income of the same, under the direction of this honorable court, or that they may have such other and further relief in the premises as may seem proper and shall be agreeable to equity and good conscience.

May it please this honorable court to grant the people's writ of subpœna to be issued under the seal of this court, directed to said Milwaukee and Minnesota Railroad Company, therein and thereby commanding it on a certain day and under a certain penalty to be and appear before this honorable court, then and there to answer this bill of complaint, and to stand to and abide by such order and decree in the premises as shall seem meet and agreeable to equity and good consience.

And your orators shall ever pray, &c.

JAMES T. SOUTTER,
By JOHN W. CARY, *Solicitor.*
SHEPHARD KNAPP,
By JOHN W. CARY, *Solicitor.*
JOHN W. CARY,
*Solicitor and of Counsel.*

48 DISTRICT OF WISCONSIN, *ss:*

On the twentieth day of September, A. D. 1865, before me personally appeared John W. Cary, the solicitor above-named, and made oath that he is the solicitor of the complainants James T. Soutter and Shephard Knapp, and that he was one of the solicitors of Bronson, Soutter, and Knapp in the foreclosure suit named in the foregoing bill, and had the principal charge of the same after the filing of the said bill of foreclosure; that said Soutter and Knapp are neither of them residents of the State of Wisconsin, and are neither of them at this time within said State to his knowledge or belief; that he has read the foregoing bill of complaint, subscribed by said complainants by him as solicitor, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on the information and belief of said complainants, and as to those matters he believes it to be true.

JAMES McFARLIN,
*Deputy Clerk.*

*Exhibit.*

At a meeting of the board of directors of the La Crosse and Milwaukee Railroad Company, held at the office of the company, in the city of Milwaukee, on the 4th day of September, A. D. 1857, the following proceedings were had:

Mr. Palmer presented the following additional deed of trust and resolution, authorizing the execution of the same by the president and secretary, which resolution was adopted by the board:

*Resolved*, That the president and secretary be authorized and directed to execute to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, in behalf of this company, a further deed of trust to this mortgage, of which the following is a copy, viz:

This indenture made and entered into this 4th day of September, in the year of our Lord one thousand eight hundred and fifty
49 seven, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, parties of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, all of the city and State of New York, parties of the second part.

Whereas the said parties of the first part did on the 31st day of December, in the year one thousand eight hundred and fifty-six, duly execute and deliver to the said parties of the second part as trustees a deed of trust bearing date on that day, wherein and whereby the said parties of the first part, for the purpose of securing the payment of certain moneys which the said party of the first part had determined to borrow, stipulated and provided for the issue of the bonds of the said La Crosse and Milwaukee Railroad Company, for ten million of dollars of the date, tenor, and description in the said deed of trust particularly set forth and payable, principal and interest, as therein provided.

And whereas the said railroad company in and by the said deed of trust granted, bargained, sold, conveyed, and confirmed unto the said parties of the second part all and singular the several tracts of land which then was or thereafter might be or constitute the site of the roadway, turnouts, engine houses, workshops, depots, and other buildings of the said company and other lands, buildings, and estate and property, real and personal and mixed therein specially and particularly described, which conveyance was, in and by the said deed of trust, declared to be and was made to the said parties of the second part, and the survivors and survivor, successors and successor, of them and their and his heirs and assigns in trust and upon the trusts, terms, and conditions therein particularly expressed.

And whereas the said parties of the first part did, in and by the said deed of trust, covenant and agree to and with the said trustees, the said parties of the second part, that the said railroad company would from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to the said trustees, or to their successors in the said trust, all such further conveyances and assurances, and would do all such further acts as might be either necessary or proper for more effectually vesting in the said trustees all such right, title, interest, or estates, both legal and equitable, as said railroad company then had or may thereafter acquire of, in, and to all and every part of the property thereby conveyed, or intended to be conveyed.

50 And whereas the said railroad company had, at the time of the execution of the said deed of trust, or have since, acquired certain property which was conveyed or intended to be conveyed thereby, and of which a further conveyance is deemed proper for more effectually vesting in the said trustees all the title, right, interest, and estate, legal or equitable, which the said company then had or have since acquired thereby (therein.)

Now, therefore, know all men by these presents, that the said parties of the first part, in pursuance of the covenants and stipulations in the said deed of trust contained, and in consideration of the premises, and of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm unto the said parties of the second part all and singular about eleven thousand tons of iron rails, being all the iron purchased for and belonging to the said company, and lying at Milwaukee and elsewhere along the line of the road of the said company, or wherever the same or any portion thereof may be and not actually laid down in the track thereof, and all and singular the locomotives, cars, engines, tools, materials, lumber, office furniture, and personal property of every description belonging to the said company wherever the same may be.

To have and to hold all and singular the property hereby conveyed or intended to be conveyed to the said parties of the second part, and the survivors or survivor of them, their successors and successor, and their and his heirs and assigns, upon the like trust terms, trusts,

and conditions as are in the said deed of trust contained, and all the power and authority granted to the said parties of the second part in and by the said deed of trust, in relation to the property conveyed thereby, and in relation to the sale, conveyance, and disposal thereof, and in relation to the disposition and application of the proceeds of such property in case of sale, are hereby conferred upon, granted to, and vested in the said parties of the second part, in relation to the property hereby conveyed, as fully and effectually as if the property hereby conveyed had constituted a part of the roadway of the said company, described in the said deed of trust, at the date thereof.

And the said parties of the second part are hereby charged
51 with all the duties in relation to the property hereby conveyed and the sale and disposition thereof, and of the proceeds thereof, in case of sale thereof with which they are charged in relation to the property conveyed or intended to be conveyed by the said deed of trust; and the said parties of the second part may, and they are hereby authorized and required to treat the property hereby conveyed in the same manner, and to hold the same upon the same terms, trusts, and conditions, and for the same purposes as the property mentioned in the said deed of trust, and not otherwise, and may take possession thereof, and sell and dispose of the same in the same manner, at the same time, and upon the same conditions, as they may take possession of and sell and dispose of the property in the said deed of trust mentioned, and as a part thereof, and not otherwise; and it is hereby declared to be the object and intention of these presents and of the parties hereto to subject the property hereby conveyed, or intended to be conveyed, and every part thereof to the operation of said deed of trust, and each and every stipulation and covenant therein contained as fully and effectually to all intents and purposes as if the said property hereby conveyed or intended to be conveyed had at the time of the execution of the said deed of trust constituted a part of the property thereby conveyed, and had then been embraced in and conveyed thereby.

In witness whereof, the said railroad co. has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, in the day and year first above written.

BYRON KILBOURN, *President.*
[L. S.] J. HADLEY, *Sec. of the R. R. Co.*

In presence of—
H. M. PEABODY.
E. P. WHALING.

STATE OF WISCONSIN, *Milwaukee County, ss:*

On the 4th day of September, in the year one thousand eight hun-
52 dred and fifty-seven, before me came Byron Kilbourn, the president of the La Crosse and Milwaukee Railroad Company, with whom I am personally acquainted, and who being by me duly sworn, says that he resides in the city of Milwaukee, in said county, and that he is president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the foregoing indenture

is the common and corporate seal of the said railroad company, and was affixed to the said indenture by order of the board of directors of said company, for the uses and purposes therein expressed; and that he, by like order, did subscribe his name thereto as president of said company; and that Jackson Hadley, as secretary of said company, subscribed his name thereto by like order and authority.

H. L. PALMER,
*Notary Public, Milwaukee County,*

and to affix thereto the corporate seal of the company, and to cause the same to be recorded in the office of the secretary of state, and to file copies thereof whenever necessary to render the same an effective security, and to deliver the same, when so executed and recorded, to the said trustees.

Whereupon a subpœna issued, returnable on the first Monday of November next, as follows, to wit:

53 UNITED STATES OF AMERICA, *District of Wisconsin:*

The President of the United States of America to Milwaukee & Minnesota Railroad Company, greeting:

You are hereby commanded, that you personally appear before the judges of the circuit court of the United States of America, for the district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of November next ensuing, at Milwaukee, to answer to a cross bill of complaint, exhibited against you in our said court by James T. Soutter & Shepherd Knapp, survivors of Green C. Bronson.

And to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said Milwaukee & Minnesota Railroad Company, if to be found in his district, and due return thereof make.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this twentieth day of September, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the nineteenth.

[SEAL.]

A. SCOTT SLOAN, *Clerk.*
JOHN W. CARY, *Solicitor.*

[50-ct. rev. stamp, cancelled.]

It is ordered by our said court that the said Milwaukee & Minnesota Railroad Company, the defendant aforesaid, do enter its appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returnable as aforesaid; otherwise the bill filed may be taken as confessed.

54 And on the same day the said James T. Soutter and Shepherd Knapp, by John W. Cary, their solicitor, filed an amendment to their answer as follows, to wit:

Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER and SHEPHERD KNAPP, survivors of Green C. Bronson, deceased, trustees, impleaded with others, *ads.* MILWAUKEE & MINNESOTA RAILROAD COMPANY.

The defendants, James T. Soutter and Shepherd Knapp, survivors, &c., by leave of the court first had and obtained, amend their answer in this cause as follows, to wit:

First amendment. Strike out the words "said decree as understood, construed, and interpreted by them," in lines 14 and 15 on page ten, and insert in lieu thereof, the words "as they were advised and believed."

Second amendment. Strike out all of page 16, after the word "complaint" in the 23d line of said page; also page 17, and all of page 18, down to and including the word "mortgage" in the 19th line of said page, and insert in lieu thereof as follows, to wit:

These defendants further show that, as they were advised and believed, and as they now believe, said mortgage so as aforesaid given by said La Crosse & Milwaukee Railroad Company to these defendants, and Green C. Bronson, as trustees, on the 31st day of December, 1856, was intended to cover and include, and did in fact cover and include, all of the locomotives, cars, engines, tools, and personal property which the said La Crosse Milwaukee Railroad Company then had, or which they might thereafter acquire, and that it did in fact cover and include, and was intended to cover and include, all the rolling stock and equipments which were on the road of said company on the 11th of June, 1860, of which the receiver took possession, but that after the giving of said mortgage, said company became embarrassed in its financial operations, and some doubt
55 and apprehension were felt by the bondholders under said mortgage, as to whether said mortgage did cover and include all the iron, locomotives, cars, engines, tools, and other personal property belonging to said company; and in order to solve said doubt, and to secure said property to the bondholders holding bonds issued under the mortgage of December 31st, 1856, so as aforesaid executed, application was made to said La Crosse & Milwaukee Railroad Company to execute a supplemental mortgage thereon to these defendants, and said Green C. Bronson, as such trustees as aforesaid, for the further security of said bonds; that in pursuance of said request, and the covenants and agreements contained in said indenture of mortgage of the date of December 31st, 1856, so as aforesaid executed, said La Crosse & Milwaukee Railroad Company did, on the

fourth day of September, in the year 1857, by resolution of its board of directors, authorize and direct the execution of such supplemental mortgage; and afterwards and on the same day, said La Crosse & Milwaukee Railroad Company, in pursuance of the authority so given, in consideration of the premises, and of one dollar to it in hand paid by said trustees, did grant, bargain, sell, convey, and confirm unto these defendants and the said Green C. Bronson, as trustees as aforesaid, all and singular about eleven thousand tons of iron rails, being all the iron rails purchased for and belonging to the said company, and lying at Milwaukee and elsewhere along the line of the road of said company, or wherever the same or any portion thereof might be, and not actually laid down in the track thereof; and all and singular, the locomotives, cars, engines, tools, materials, lumber, office furniture, and personal property of every description, belonging to the said company wherever the same might be. To have and to hold the same to said trustees, their successors and assigns, upon the like trusts, terms, and conditions as are in the said mortgage or trust deed of December 31st, 1856, contained, with all the powers and authority therein granted, which said mortgage or deed of trust, so as aforesaid executed, was afterwards and on the fifth day of September, A. D. 1857, duly recorded in the office of the secretary of state of the State of Wisconsin, as a mortgage, a copy of which said mortgage, and the resolutions passed by the board of directors of said La Crosse & Milwaukee Railroad Company,
56 authorizing the execution thereof, are hereto attached as Exhibit No. 4.

That on the said fourth day of September, 1857, said La Crosse & Milwaukee Railroad Company was the owner and in possession of about eleven thousand tons of iron rails, and of all the locomotives, cars, engines, tools, and personal property mentioned and described in the said bill of complaint, of which Hans Crocker, esq., took possession as receiver of said La Crosse & Milwaukee Railroad on the 11th day of June, 1860; and that in and by said last mentioned mortgage, or deed of trust, the whole of said iron, locomotives, cars, engines, tools, and personal property were conveyed to said trustees as security for the payment of the bonds issued under the mortgage or deed of trust of the date of December 31st, 1856, aforesaid; that said iron rails were afterwards laid in the track of said railroad, a part thereof on the eastern division, and the remainder on the western division, and said rolling stock and other property was, from the giving of said mortgage until it was taken possession of by said receiver, used on said road from Milwaukee to La Crosse, and that said mortgage is now and ever since has been a lien and encumbrance thereon to the full amount of said bonds now remaining unpaid.

And these defendants, further answering, say that by the mistake or inadvertence of the counsel who drew and prepared the original bill of foreclosure, and without the knowledge or information of these defendants, said mortgage or deed of trust of September 4th, 1857, was not pleaded or set out in the said bill of foreclosure; and that

said suit progressed to a decree and sale without any reference to said mortgage or deed of trust as these defendants are informed and believe, and without the knowledge or information of these defendants, and under the impression that the mortgage or deed of trust of December 31st, 1856, covered and included all the rolling stock on said road when the receiver took possession of the same on the 11th day of June, 1860.

And these defendants further show that the amount of the decree in the said foreclosure suit of Bronson, Soutter & Knapp, on the 25th day of April, 1863, was the sum of three millions nine hundred and twenty one thousand two hundred and ninety-one dollars; that the proceeds of said foreclosure sale amounted to the sum of twenty-eight hundred thousand dollars, which sum deducted from the amount of said decree, at the date of said sale, left the sum of one million
57 one hundred and twenty-nine thousand two hundred and one dollars of said decree unpaid, and that said last-mentioned sum, together with interest thereon from the 25th day of April, 1863, still remains due and unpaid on said bonds so as aforesaid issued under the mortgage or deed of trust bearing date December 31, 1856, and is secured by the mortgage or deed of trust of September 4th, 1857, above set forth.

And these defendants further show that said mortgage or deed of trust, so as aforesaid given and bearing date September 4th, 1857, is now in full force, unsatisfied and uncancelled, and that it has never been foreclosed, or any proceedings at law had to collect the same, or the bonds thereby secured, except as above set forth.

And these defendants insist that, under and by virtue of the mortgage or deed of trust of September 4th, 1857, these defendants are entitled to the possession, control, and use of said mortgaged property, and to have said mortgage or deed of trust foreclosed, and out of the proceeds thereof, to pay and satify said bonds, or so much thereof as said proceeds will pay and satisfy.

Third amendment. Strike out the last line on page 18 of said answer, all of pages 19 and 20, and the first 8 lines on page 21.

JAMES T. SOUTTER,
By JOHN W. CARY,
*His Solicitor.*
SHEPPERD KNAPP,
By JOHN W. CARY,
*His Solicitor.*

DISTRICT OF WISCONSIN, *ss:*

On the 20th day of September, A. D. 1865, before me personally appeared John W. Cary, the solicitor above named, and made oath that he is the solicitor of the defendants, James T. Soutter and Shepherd Knapp, and that he was one of the solicitors of Bronson, Soutter, and Knapp, in the foreclosure suit named in the foregoing amended answer, and had the principal charge of the same after the bill of complaint was filed therein; that said Soutter and Knapp are neither of them residents of the State of Wisconsin, and are neither of them at

this time within said State to his knowledge or belief; that said defendants had no personal knowledge or oversight of the proceedings in said foreclosure suit, but that the said deponent
58 had personal knowledge and cognizance of said proceedings; that he has read the foregoing amended answer subscribed by said defendants by him as solicitor, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated to be on the information and belief of said defendants, and as to those matters he believes it to be true.

JAMES McFARLIN,
*Master in Chancery.*

59 *Exhibit No. 4.*

At a meeting of the board of directors of the La Crosse and Milwaukee Railroad Company, held at the office of the company, in the city of Milwaukee, on the 4th day of September, A. D. 1857, the following proceedings were had:

Mr. Palmer presented the following additional deed of trust and resolution, authorizing the execution of the same by the president and secretary, which resolution was adopted by the board:

*Resolved*, That the president and secretary be authorized and directed to execute to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, in behalf of this company, a further deed of trust or mortgage, of which the following is a copy, viz:

This indenture, made and entered into this 4th day of September, in the year of our Lord, one thousand eight hundred and fifty-
60 seven, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, parties of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, all of the city and State of New York, parties of the second part.

Whereas the said parties of the first part did, on the 31st day of December, in the year one thousand eight hundred and fifty-six, duly execute and deliver to the said parties of the second part, as trustees, a deed of trust, bearing date on that day, wherein and whereby the said parties of the first part, for the purpose of securing the payment of certain moneys which the said party of the first part had determined to borrow, stipulated and provided for the issue of the bonds of the said La Crosse and Milwaukee Railroad Company for ten million of dollars, of the date, tenor, and description in the said deed of trust particularly set forth, and payable principal and interest as therein provided, and whereas the said railroad company in and by the said deed of trust granted, bargained, sold, conveyed, and confirmed unto the said parties of the second part all and singular the several tracts of land which then was or thereafter might be or constitute the site of the roadway, turnouts, engine houses, workshops, depots, and other build-

ings of the said company and other lands, buildings, and estate and property, real and personal and mixed therein specially and particularly described, which conveyance was in and by the said deed of trust declared to be and was made to the said parties of the second part, and the survivors and survivor, successors and successor of them and their and his heirs and assigns in trust and upon the trusts, terms, and conditions therein particularly expressed.

And whereas the said parties of the first part did, in and by the said deed of trust, covenant and agree to and with the said trustees, the said parties of the second part, that the said railroad company would from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to the said trustees, or to their successors in the said trust, all such further conveyances and assurances, and would do all such further acts as might be either necessary or proper for more effectually vesting in the said trustees all such right, title, interest or estates, both legal and equitable, as said railroad company then had or may thereafter acquire of, in, and to all and every part of the property thereby conveyed, or intended to be conveyed.

61 And whereas the said railroad company had, at the time of the execution of the said deed of trust, or have since, acquired certain property which was conveyed or intended to be conveyed thereby, and of which a further conveyance is deemed proper for more effectually vesting in the said trustees all the title, right, interest, and estate, legal or equitable, which the said company then had or have since acquired thereby (therein.)

Now, therefore, know all men by these presents, that the said parties of the first part, in pursuance of the covenants and stipulations in the said deed of trust contained, and in consideration of the premises, and of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm unto the said parties of the second part all and singular about eleven thousand tons of iron rails, being all the iron purchased for and belonging to the said company, and lying at Milwaukee and elsewhere along the line of the road of the said company, or wherever the same or any portion thereof may be and not actually laid down in the track thereof, and all and singular the locomotives, cars, engines, tools, materials, lumber, office furniture, and personal property of every description belonging to the said company wherever the same may be. To have and to hold all and singular the property hereby conveyed or intended to be conveyed to the said parties of the second part, and the survivors or survivor of them, their successors and successor, and their and his heirs and assigns, upon the like trust terms, trusts, and conditions as are in the said deed of trust contained, and all the power and authority granted to the said parties of the second part in and by the said deed of trust, in relation to the property conveyed thereby, and in relation to the sale, conveyance, and disposal thereof, and in relation to the disposition and application of the pro-

ceeds of such property in case of sale, are hereby conferred upon, granted to, and vested in the said parties of the second part, in relation to the property hereby conveyed, as fully and effectually as if the property hereby conveyed had constituted a part of the roadway of the said company, described in the said deed of trust, at the date thereof.

And the said parties of the second part are hereby charged
62 with all the duties in relation to the property hereby conveyed and the sale and disposition thereof, and of the proceeds thereof, in case of sale thereof with which they are charged in relation to the property conveyed or intended to be conveyed by the said deed of trust; and the said parties of the second part may, and they are hereby, authorized and required to treat the property hereby conveyed in the same manner, and to hold the same upon the same terms, trusts, and conditions, and for the same purposes as the property mentioned in the said deed of trust, and not otherwise, and may take possession thereof, and sell and dispose of the same in the same manner, at the same time, and upon the same conditions as they may take possession of and sell and dispose of the property in the said deed of trust mentioned, and as a part thereof, and not otherwise; and it is hereby declared to be the object and intention of these presents and of the parties hereto, to subject the property hereby conveyed, or intended to be conveyed, and every part thereof, to the operation of said deed of trust, and each and every stipulation and covenant therein contained as fully and effectually to all intents and purposes as if the said property hereby conveyed or intended to be conveyed had at the time of the execution of the said deed of trust constituted a part of the property thereby conveyed, and had then been embraced in and conveyed thereby.

In witness whereof, the said railroad co. has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, in the day and year first above written.

[L. S.] BYRON KILBOURN, *President.*
J. HADLEY, *Sec. of the R. R. Co.*

In presence of—
H. M. PEABODY,
E. P. WHALING.

STATE OF WISCONSIN, *Milwaukee County, ss:*

On the 4th day of September, in the year one thousand eight hundred and fifty-seven, before me came Byron Kilbourn, the
63 president of the La Crosse and Milwaukee Railroad Company, with whom I am personally acquainted, and who being by me duly sworn, says that he resides in the city of Milwaukee in said county, and that he is president of the La Crosse and Milwaukee Railroad Company, that the seal affixed to the foregoing indenture is the common and corporate seal of the said railroad company, and was affixed to the said indenture by order of the board of directors of said company, for the uses and purposes therein expressed, and that he by like order did subscribe his name thereto as president of said com-

pany, and that Jackson Hadley, as secretary of said company, subscribed his name thereto by like order and authority.

H. L. PALMER,
*Notary Public, Milwaukee County,*

and to affix thereto the corporate seal of the company, and to cause the same to be recorded in the office of the secretary of state, and to file copies thereof whenever necessary to render the same an effective security, and to deliver the same when so executed and recorded to the said trustees.

64 SEPTEMBER 20, 1865.

This day came the Milwaukee and St. Paul Railway Company, by John W. Cary, its solicitor, and filed amendments to its answer as follows, to wit:

Circuit court of the United States for the 9th circuit and district of Wisconsin.

MILWAUKEE AND ST. PAUL RAILWAY COMPANY, impleaded with JAMES T. SOUTTER *et al.*,
*ads.*
MILWAUKEE AND MINNESOTA RAILROAD COMPANY.

The defendant, Milwaukee and St. Paul Railway Company, amends its answer in this cause by adding after the word "creditor," at the end of the first paragraph of the eighth page of the printed answer, the following, to wit:

That on the 4th day of September, A. D. 1857, the said La Crosse and Milwaukee Railroad Company, for the purpose of further securing the bonds so as aforesaid issued under the mortgage so given to Bronson, Soutter & Knapp, on the 31st day of December, A. D. 1856, executed and delivered to said Bronson, Soutter & Knapp, as such trustees, a certain other indenture of mortgage, bearing date on said 4th day of September, A. D. 1857, whereby said La Crosse and Milwaukee Railroad Company, in consideration of the covenants and agreements contained in the said mortgage of the 31st of December, A. D. 1856, and of the premises, and one dollar to it paid by said Bronson, Soutter, and Knapp, did grant, bargain, sell, convey, confirm, and mortgage unto the said Green C. Bronson, James T. Soutter, and Shepherd Knapp, (among other things,) all and singular the locomotives, cars, engines, tools, materials, lumber, office furniture, and personal property of every description belonging to the said La Crosse and Milwaukee Railroad Company wherever the same might be. To have and to hold the same to the said Bronson, Soutter, and Knapp, and their successors and assigns upon the like trusts, terms, and conditions as are in the said deed of trust contained, with all the powers and authority therein granted; which said mortgage was afterwards, and on the 5th day of September, A. D. 1857, duly recorded in the office of

the secretary of state of the State of Wisconsin as a mortgage,
65 and that said mortgage now remains in full force and effect, uncancelled and unsatisfied; that on the said 4th day of September, A. D. 1857, said La Crosse and Milwaukee Railroad Company was the owner and in possession of all the locomotives, cars, engines, tools, and personal property mentioned and described in the said bill of complaint, of which said Hans Crocker, esq., took possession as receiver of said La Crosse and Milwaukee railroad, on the 11th day of June, A. D. 1860, as stated in said bill of complaint, and being the same locomotives, cars, engines, tools, and personal property which was delivered to this defendant under the order of the 12th day of June, A. D. 1863, made by the said district court in the foreclosure suit of said Bronson, Soutter, and Knapp as aforesaid; that in and by the mortgage so as aforesaid made on the 4th day of September, A. D. 1857, said locomotives, cars, engines, tools, and personal property was mortgaged and transferred to said Bronson, Soutter, and Knapp as trustees as aforesaid; that by reason of the failure to pay said bonds secured by said mortgage, the said Soutter and Knapp, as survivors of said Green C. Bronson, trustees as aforesaid, became and are entitled to the possession of all of said locomotives, cars, engines, tools, and personal property, according to the terms and conditions of said mortgage. And that although this court may be of the opinion that this defendant did not become the owner of said locomotives, cars, engines, and rolling stock by virtue of the foreclosure and sale of the land grant mortgage as aforesaid. Yet inasmuch as this defendant is the cestui que trust of said Soutter and Knapp, survivors, &c., trustees as aforesaid, and the owner as aforesaid of nearly all the bonds and debt secured by said mortgage, and is now in the lawful possession of said locomotives, cars, engines, tools, and personal property. It submits to this honorable court that it is entitled to be treated as a mortgagee in possession of the mortgaged property, and that its possession cannot be questioned or disturbed by the complainant, whose right and title is subject and inferior to the mortgages aforesaid, except upon a bill to redeem said property from the lien of said mortgages.

[SEAL.] THE MIL. & ST. PAUL R'Y CO.,
By AL'X. MITCHELL, *P't.*

Attest: A. CARY, *Sec'y.*

JOHN W. CARY,
*Solicitor and of Counsel.*

66 SEPTEMBER 25, 1865.

This day came the parties, by their counsel, and on motion of Matt. H. Carpenter, solicitor for complainant, it is ordered by the court that the Milwaukee and Minnesota Railroad Company have sixty days to answer or demur to the cross bill filed by James T. Soutter and Shepherd Knapp, survivors, &c., trustees.

SEPTEMBER 28, 1865.

This day came the complainants in the cross bill, and filed their motion for the appointment of a receiver as follows, to wit:

*Cross bill.*

Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER and SHEPHERD KNAPP, survivors of Green C. Bronson, trustees,
*vs.*
MILWAUKEE AND MINNESOTA RAILROAD COMPANY.

And now come the said complainants, by John W. Cary, their solicitor, and move the court now here for the appointment of a receiver in this cause, of all the locomotives, cars, engines, tools, and personal property which were on the La Crosse and Milwaukee railroad on the 11th day of June, 1860, of which the receiver, Hans Crocker, took possession on that day as receiver, which motion is founded on said cross bill and the record and papers on file in said cause.

Dated September 27th, 1865.

JOHN W. CARY,
*Solicitor for Complainants.*

SEPTEMBER 30, 1865.

This day came the marshal and made return of the subpœna on cross bill, indorsed thereon as follows:

"I hereby admit service of this subpœna for the Milwaukee and Minnesota Railroad Company.

"Sept. 21, 1865.

"MATT. H. CARPENTER, *Sol.*"

Fees, $206.

JANUARY 4, 1866.

On motion of Matt. H. Carpenter, solicitor of the Milwaukee and Minnesota Railroad Company, ordered that the said company last named have thirty days to answer or demur to the cross bill of complaint in the above-entitled cause.

JANUARY 8, 1866.

This day came James T. Soutter and Shepherd Knapp, survivors, &c., by their solicitor, and filed notice that the motion heretofore filed for the appointment of a receiver would be brought on
67 for a hearing before the Hon. Andrew G. Miller, at chambers, with the petition of the Milwaukee and St. Paul Railway Company attached as follows, to wit:

*Cross bill.*

Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER and SHEPHERD KNAPP, survivors, &c.,
*vs.*
MILWAUKEE AND MINNESOTA RAILROAD COMPANY.

Please to take notice that on the 8th day of January, A. D. 1866, at 10 o'clock a. m. of that day, I shall move the Honorable Andrew G. Miller, one of the judges of this court, at his chambers, in the custom-house building, in the city of Milwaukee and State of Wisconsin, to take up the motion made and filed in this cause on the 28th day of September last, for the appointment of a receiver in this cause, and bring the same to a hearing, and that the annexed petition of the Milwaukee and St. Paul Railway Company, and affidavits hereafter to be served, will be presented as additional grounds for the granting of said motion.

Yours, &c.,

JOHN W. CARY,
*Complainants' Solicitor.*

To MATT. H. CARPENTER, Esq.,
*Def'ts' Solicitor.*

Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER and SHEPHERD KNAPP, trustees, &c.,
*vs.*
MILWAUKEE AND MINNESOTA RAILROAD COMPANY.

To the honorable judges of the circuit court of the United States for the ninth circuit and district of Wisconsin:

Your petitioner, the Milwaukee and St. Paul Railway Company, respectfully shows, that on the 31st day of December, 1856, the La Crosse and Milwaukee Railroad Company made their certain mortgage or deed of trust to Green C. Bronson, James
68 T. Soutter and Shepherd Knapp, as trustees, to secure bonds to be thereafter issued by said company, whereby they mortgaged to said trustees the line of their railroad and its appurtenances, from Madison, by way of Portage City, to La Crosse, together with all and singular its locomotives, engines, cars, and rolling stock, and personal property which had then been or might thereafter be procured for, or used on said roads, or either of them, that under said mortgage four millions of dollars in amount of bonds were issued; that default having been made on said bonds,

said trustees, on the 5th day December, 1869, filed their bill in the district court of the United States for the district of Wisconsin, to foreclose said mortgage or deed of trust, and such proceedings were thereafter had, that Hans Crocker, esq., was, on the 18th day of May, 1860, appointed receiver therein; that he was subsequently, on the 7th day of June, 1860, appointed receiver of the whole road, subject to his prior appointment in the case of Sebre Howard, and that on the 11th day of June, 1860, he took possession of the whole road by virtue of his said appointments. That such proceedings were thereafter had in said foreclosure suit, that a final decree of foreclosure and sale was made on the 13th day of January, 1862, and afterwards, and on the 25th day of April, 1863, the premises were sold by the marshal, and the sale duly confirmed, and thereupon the purchasers formed your petitioner under and by virtue of the laws of the State of Wisconsin, and thereupon the whole mortgaged premises so sold were duly transferred to your petitioner as owners. That on the 25th day of April, said decree of foreclosure and sale amounted to the sum of $3,921,291; that the total proceeds of said sale were $2,800,000, and that after deducting said proceeds of sale from the amount due on said decree, there remained due and unpaid on said bonds secured by said mortgage as ascertained and fixed by said decree the sum of $1,129,201, and that said last amount, with interest thereon from the 25th day of April, 1863, still remains due and unpaid on said bonds, and that the whole of said bonds and said indebtedness secured thereby, (excepting about the sum of $25,000 which is mostly in the hands of unknown owners, or the bonds representing the same have been lost or destroyed,) were on the said 5th day of May, 1863, sold, assigned, transferred, and delivered to your petitioner, and ever since then have been and now are owned by your petitioner in its own right.

69 Your petitioner further shows that on the 6th day of May, 1863, your petitioner filed its petition to be let into the possession of the mortaged property so as aforesaid purchased by it, and in and by its petition specially referred to the proceedings in said foreclosure suit, the sale and conveyance by the marshal, and the subsequent conveyance to your petitioner, in and by which said sale and said conveyances all the rolling stock on said La Crosse road when the receiver took possession thereof on the 11th day of June, 1860, was sold, transferred, and conveyed to your petitioner. That the defendant, Milwaukee and Minnesota Railroad Company, appeared and resisted the granting of said petition, and filed an answer thereto specially denying the title of your petitioner to said rolling stock; that said petition was afterwards heard by the said district court; on the 12th day of June, 1863, an order was made by said district court directing said receiver to let your petitioner into the possession of said railroad from Portage City to La Crosse, and all of said rolling stock that was on said road when the receiver took possession thereof, a copy of which order is hereto annexed as Exhibit No. 1. And your petitioner shows that it took said rolling stock under and by virtue of the aforesaid proceedings as the purchaser thereof; that it

ever since has held and now holds said rolling stock as such purchaser, claiming to be the owner thereof, and insists that the proceedings aforesaid made are an adjudication upon the right, title, and claim of the said defendant, Milwaukee and Minnesota Railroad Company, to said rolling stock, and while it remains in full force and unreversed cannot be questioned or impeached by said defendant, Milwaukee and Minnesota Railroad Company, in this suit or any other collateral proceeding.

Your petitioner further shows that it so being in the possession of said rolling stock, and claiming to be the owner thereof, the said defendant, Milwaukee and Minnesota Railroad Company, on the 11th day of August, exhibited its supplemental bill of complaint to said foreclosure suit in this court against your petitioner, and James T. Soutter and Shepherd Knapp, survivors of Green C. Bronson, deceased, trustees as aforesaid, and William Wallace Pratt and William H. White, the purchasers at said foreclosure sale; that in and by said supplemental bill of complaint said defendant set out its title to the La Crosse and Milwaukee railroad, its rolling stock and personal property, by virtue of a mortgage given by said La
70 Crosse and Milwaukee Railroad Company on the 21st day of June, 1858, to William Barnes. The foreclosure thereof and sale under the power and the organization under the statute of Wisconsin, by the purchaser at said sale of the said defendant, Milwaukee and Minnesota Railroad Company, and that thereby said last named company succeeded to all the property, rights, privileges, and franchises which were of the said La Crosse and Milwaukee Railroad Company on the 21st day of June, 1858, said supplemental complaint then set forth the foreclosure proceedings first above-mentioned and the organization of your petitioner. That your petitioner was in the possession of all the rolling stock of which the receiver took possession on the 11th day of June, 1860, claiming it as owner under said foreclosure purchased and organization as aforesaid, and then prayed, among other things, that said defendant, Milwaukee and Minnesota Railroad Company, might be declared, by the decree of this honorable court, the owner of all the rolling stock that was on the whole La Crosse and Milwaukee railroad at the time of the appointment of the receiver, except forty box cars specially mentioned and described, and that an account might be taken of the use of said rolling stock by said Milwaukee and St. Paul Railway Company, and that said last named company might be enjoined from using or in any manner interfering with said rolling stock, and for general relief.

That process of subpœna was issued out of, and under the seal of, this honorable court, and such proceedings had, that the defendants named in said supplemental bill of complaint appeared in said suit and answered, and the same is now pending and undetermined in this court, as by said bill and other pleadings and proceedings in the said cause now remaining filed as of record in this court, reference being thereto had will more fully and at large appear, and to which, for greater certainty, your petitioner prays leave to refer.

Your petitioner further shows that, as it is advised and believed, said mortgage so as aforesaid given to said Bronson, Soutter, and Knapp, was intended to cover, and in fact did cover, and include all of the locomotives, cars, engines, tools, and personal property which the said La Crosse and Milwaukee Railroad Company then had, or which they might thereafter acquire, and that it did in fact
71 cover and include, and was intended to cover and include, all the rolling stock and equipments which were on the road of said company on the 11th day of June, 1860, of which the receiver took possession; yet that after the giving of said mortgage, said company became embarrassed in its financial operations, and some doubt and apprehension were felt by the bondholders under said mortgage as to whether said mortgage did in fact cover and include all the iron, locomotives, cars, engines, tools, and other personal property belonging to said company, and in order to solve said doubt, and to secure said property to the bondholders holding bonds issued under said mortgage, so as aforesaid executed, application was made to the said La Crosse and Milwaukee Railroad Company to execute a supplemental mortgage thereon to said trustees as aforesaid, for the further security of said bonds. That in pursuance of said request, and of the covenants and agreements contained in said indenture and mortgage so as aforesaid given to said trustee, said La Crosse and Milwaukee Railroad Company did, on the 4th day of September, in the year 1857, by resolution of its board of directors, authorize and direct the execution of such supplemental mortgage, and afterwards, and on the same day, said La Crosse and Milwaukee Railroad Company, in pursuance of said resolutions and in consideration of the premises, and of one dollar to it in hand paid by said trustees, did grant, bargain, sell, convey, and confirm unto said trustees, Bronson, Soutter, and Knapp, all and singular about eleven thousand tons of iron rails, being all the iron rails purchased for and belonging to the said company, and lying at Milwaukee and elsewhere along the line of the road of said company, or wherever the same or any portion thereof might be, and not actually laid down on the track thereof, and all and singular the locomotives, cars, engines, tools, materials, lumber, office furniture, and personal property of every description belonging to the said company, wherever the same might be. To have and to hold the same to said trustees, their successors and assigns, upon the trusts, terms, and conditions as are in the said mortgage or trust deed of December 31st, 1856, contained, with all the powers and authority therein granted, which said mortgage or deed of trust so as aforesaid executed, was afterwards, and on the fifth day of September, 1857, duly recorded in the office of secretary of state of the State of Wisconsin, as a mortgage, a copy of which said mortgage and the resolution passed by the board of directors of said La Crosse
72 and Milwaukee Railroad Company authorizing the execution thereof is hereto attached as Exhibit No. 2.

That at the time of the execution of said mortgage, on the 4th day of September, 1857, but $1,991,000 in amount of bonds had been issued under said mortgage of December 31st, 1856, and that after the

execution, delivery, and record of said mortgage of September 4th, 1857, there was issued the further amount of bonds under said mortgages of $2,009,000, making in all issued under said mortgage the sum of $4,000,000.

That on the said 4th day of December, 1857, said La Crosse and Milwaukee Railroad Company was the owner and in the possession of about eleven thousand tons of iron rails and of all the locomotives, cars, engines, tools, and personal property mentioned and described in the said bill of complaint, of which said Hans Crocker, esq., took possession, as receiver, on the 11th day of June, 1860; and that in and by said last mentioned mortgage or deed of trust, the whole of said iron, locomotives, cars, engines, tools, and personal property were conveyed to said trustees as security for the payment of the bonds issued under the mortgage or deed of trust so as aforesaid given to said trustees, and bearing date December 31st, 1856, as aforesaid; that said iron rails were afterwards laid in the track of said railroad, a part thereof on the eastern division and the remainder on the western division, and said rolling stock and other property was, from the giving of said mortgage of September 4th, 1857, until it was taken possession of the said receiver, used on said road from Milwaukee to La Crosse, and that said mortgage last named is now, and ever since has been, a lien and encumbrance thereon, to the full amount of said bonds now remaining unpaid.

Your petitioner further shows that, in its answer to said supplemental bill of complaint, it has set up its right and title to said rolling stock under said mortgage so as aforesaid, given by Bronson, Soutter, and Knapp, on the 31st day of December, 1856, the foreclosure thereof and sale by the marshal, and organization and conveyance to your petitioner and the aforesaid order of the said district court, giving your petitioner the possession thereof, under said foreclosure sale and purchase; and that in addition thereto your petitioner has set up the supplemental mortgage so as aforesaid given to said trustees, that your petitioner is the owner of all the bonds issued under said mortgage so as aforesaid given on the 31st
73 day of December, 1856, except the sum of about $25,000 in amount, and that the amount due and unpaid on said bonds, as fixed by said decree, is the sum of about $1,129,201, with interest from April 25th, 1863; that your petitioner is in possession of all the rolling stock of which the receiver took possession on the 11th day of June, 1860, under the aforesaid order of the district, made June 11, 1863, and that all of said rolling stock was owned by and belonged to said La Crosse and Milwaukee Railroad Company, on the 4th day of September, 1857, when said mortgage of that date was made by said company; and that under the circumstances your petitioner must be regarded and treated as a mortgagee in possession of said property, and that its possession thereof cannot be disturbed by the defendant, Milwaukee and Minnesota Railroad Company, except by a bill to redeem said property from said mortgage.

Your petitioner further shows, that if it did not become the absolute owner of said rolling stock by virtue of said marshal's sale and

other proceedings, it is a mortgagee in possession thereof and entitled to the possession of the same until payment of the amount so as aforesaid due on said land grant bonds, as your petitioner is advised and believes. That your petitioner is also informed and believes that this court, in a certain cause therein pending wherein James T. Soutter is complainant and the Milwaukee and Minnesota Railroad Company and others are defendants, but to which suit your petitioner is not a party either complainant or defendant, has made an order that said rolling stock be delivered to said Milwaukee and Minnesota Railroad Company, and your petitioner is informed and believes that said last named company, pretending to act under and by virtue of said order, are about to dispossess your petitioner and take possession of said rolling stock. That said Milwaukee and Minnesota Railroad Company have but ninety-five miles of railroad, that the proportion of rolling stock purchased by the receiver adjudged to belong to said road is more than sufficient to operate the same, and that said company have no use for the rolling stock so as aforesaid in the possession of your petitioner. And your petitioner is informed and verily believes that should said company get possession of the rolling stock in question, there is great danger that it will remove the same or a portion thereof from said railroad and the State,
74 and so dispose of the same as to prevent the enforcement of the cross bill above mentioned for the foreclosure of the supplemental mortgage so as aforesaid given to secure the bonds issued under said land grant mortgage and now owned by your petitioner.

Your petitioner therefore prays, that a receiver of said rolling stock may be appointed in said cross bill, to take possession of said rolling stock with power to lease the same for a proper compensation either to your petitioner or to said Milwaukee and Minnesota Railroad Company, requiring from the lessee adequate security for the safe keeping and return thereof, and to collect and hold the rent thereof for the use and benefit of the party entitled thereto.

ALX. MITCHELL, *P't.*
JOHN W. CARY,
*Solicitor and of Counsel.*

DISTRICT OF WISCONSIN, *ss:*

On this 6th day of January, A. D. 1866, personally appeared before me Alexander Mitchell, and made oath that he is one of the officers of the Milwaukee and St. Paul Railway Company, the petitioner named in the foregoing petition, to wit: its president, that he has heard read said petition, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be upon the information and belief of said petitioner, and as to those matters, he believes it to be true.

FRANCIS BLOODGOOD,
*U. S. Circuit Court Comr., Dist. Wis.*

(No Exhibits 1 and 2 are attached as stated in petition.)

And came the said James T. Soutter and Shepherd Knapp, by their counsel, and entered in the rule book an order that the Milwaukee and Minnesota Railroad Company appear before Hon. Andrew G. Miller, district judge, at his office in Milwaukee, on Friday the 12th day of January, A. D. 1866, at 10 o'clock in the forenoon, to show cause why a receiver should not be appointed according to the cross bill.

JAN. 13, 1866.

This day came the Milwaukee and Minnesota Railroad Company, by its solicitor, and filed its motion to strike the cross bill from the files, as follows, to wit:

75 In the circuit court of the United States for the district of Wisconsin, in equity.

| | |
|---|---|
| JAMES T. SOUTTER and SHEPHERD KNAPP, survivors, &c., *vs.* THE MILWAUKEE AND MINNESOTA RAILROAD Company. | Suit by supplemental bill. |

Here in court comes Matthew H. Carpenter, solicitor for the Milwaukee and Minnesota Railroad Company, and moves the court here to dismiss and strike from the files of this court the pretended cross bill exhibited in this suit by James T. Soutter and Shepherd Knapp, survivors of Green C. Bronson, deceased, for the following reasons, to wit:

First. That the said bill is in its scope and effect a bill to review the decree of this court in the case of Green C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, *vs.* the La Crosse and Milwaukee Railroad Company and others, which suit was to foreclose a certain mortgage on the western division of the La Crosse and Milwaukee railroad, so called, and for alleged errors of fact, and is filed without leave of court for that purpose first had and obtained.

Second. Because the supplemental bill prays no relief against the said Soutter and Knapp, and the said cross bill contains no matter of defence to the prayer of the said supplemental bill, which was exhibited solely for the purpose of ascertaining the rights of these who purchased under the said foreclosure decree, and not for the purpose of questioning, defeating, or impairing any right or alleged right of the said Soutter and Knapp, or either of them.

Third. That there is a defect of parties defendant. The Milwaukee and St. Paul Railway Company is a necessary party defendant.

Fourth. That the said pretended cross bill is in other respects informal and insufficient, and is filed in conflict with the practice of this court.

The Milwaukee and Minnesota Railroad Company,
By MATT. H. CARPENTER,
*Solicitor.*

76 And also at the same time the Milwaukee & Minnesota Railroad Company filed its answer to the petition for a receiver of rolling stock, as follows, to wit:

*Cross bill.*

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER and SHEPHERD KNAPP, survivors, &c.,
*vs.*
THE MILWAUKEE & MINNESOTA RAIROAD COMpany.

Here in court comes the Milwaukee & Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and protesting that the said cross bill is irregularly filed for reasons set forth in a motion this day made by said company to dismiss the same, and protesting that there is no power in a judge of this court in vacation of the court to appoint a receiver, and answering the petition of the Milwaukee & St. Paul Railway Company for the appointment of a receiver, says:

On information and belief that the said pretended supplemental mortgage mentioned in said petition was made and executed, and caused to be recorded in the office of secretary of state of the State of Wisconsin, for the purpose and with the design and intent on the part of the La Crosse & Milwaukee Railroad Company, its officers and directors, to thereby hinder, delay and defraud its creditors, and particularly one Newcomb Cleveland, and the firm of Vose, Livingston & Co., of the city and State of New York; that the same purports to be no more than a chattel mortgage, and was never filed or renewed, according to the laws of the State of Wisconsin in that behalf then in force; and that this defendant has this day filed its answer to the said cross bill, which answer is true, as this defendant is informed and believes, and this defendant asks and prays that the same and the several allegations thereof may be taken to be, and be considered a part of, this answer, with the same effect as though the same matters and allegations were here again repeated in full. This defendant further denies that said Milwaukee & St. Paul Railway Company is a mortgagee in possession of the rolling stock, or any part thereof, described in said petition; but says that said company obtained and took possession thereof, together with the Eastern Division railroad,

77 so called, under and by virtue of certain orders made by the district court of the United States for the district of Wisconsin and of this court, in certain causes pending, respectively, in said courts, which orders were made on or about the 12th day of June, A. D. 1863, and that said company, as a condition of receiving the same, entered into a certain bond, with sureties, in the penal sum of one hundred thousand dollars to the United States, for the use of all persons interested, conditioned to obey the orders of the court then made in that behalf, and all subsequent orders of said court as to the operation and management of said railroad and rolling

stock, and that said company entered into such possession in fact as the receiver of said court, respectively, and not otherwise; and after said orders were vacated by said courts, said company held possession of said rolling stock, and used and operated the same only in its own wrong and in contempt of the authority of this court.

This defendant, further answering, expressly and positively says that it has no purpose or intention of running any part of said rolling stock out of this State, or beyond the reach and control and jurisdiction of this court, or to sell, encumber, or dispose of the same, or any part thereof; that it does intend to recover possession thereof under the orders of this court, and thereafter to use and employ the same in and about its legal, legitimate, and proper business in this State, and not otherwise; and does not intend in any way or manner to withdraw the same from the enforcement of any valid claim thereon, or from the pretended claim set up in said petition and cross bill, and that the statements in said petition in that behalf are utterly untrue.

The Milwaukee & Minnesota Railroad Company,
By MATT. H. CARPENTER, *its Solicitor.*

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says, that he is the vice president and agent of the Milwaukee & Minnesota Railroad Company, and makes this verification on its behalf; that he has heard read and knows the contents of the foregoing answer, and that the same is true to his own knowledge, except as to the matters and things therein stated on information and belief, and that as to those matters he believes it to be true.

A. FLEMING.

Subscribed and sworn to before me, this 11th day of January, A. D. 1866.

JAMES McFARLIN,
*Commissioner U. S., Dist. of Wis.*

78 And on the same day came the Milwaukee & Minnesota Railroad Company, by its solicitor, and filed its answer to the cross bill, subject to its motion to dismiss, as follows, to wit:

In the circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER and SHEPHERD KNAPP, survivors, &c.,
*vs.*
THE MILWAUKEE & MINNESOTA RAILROAD Company.

The separate answer of the Milwaukee and Minnesota Railroad Company to the cross bill, so called, exhibited by James T. Soutter and Shepherd Knapp, survivors, &c., against the Milwaukee and Minnesota Railroad Company.

This defendant, saving and reserving to itself all manner of benefit

and advantage of exception to the many insufficiencies, uncertainties, and imperfections of the said cross bill, and protesting that the same is improperly filed, for answer unto so much, or such portions thereof as it is advised are necessary and material to be answered unto, answering, says:

That it is true and it admits that on or about the 10th day of August, 1864, the said Milwaukee and Minnesota Railroad Company exhibited its supplemental bill of complaint in this honorable court, as stated in the said cross bill, which now remains on record in this honorable court, and this defendant begs leave to refer to the same and the exhibits thereto attached as parts of this answer, with the same effect as though the same were herein set out in full, and admits that proceedings were thereupon had as stated in said cross bill.

This defendant, answering on information and belief, says, that it is not true, as stated in said cross bill, that the said mortgage, given by said La Crosse and Milwaukee Railroad Company to said Bronson, Soutter, and Knapp, as trustees, on the 31st day of December, 1856, was intended to cover or include, or did in fact cover and include all the locomotives, cars, engines, tools, and personal property which the said La Crosse and Milwaukee railroad then had, or which they might thereafter acquire, and says that it does not in fact
79 cover and include, nor was it intended to cover or include all the rolling stock or equipments which were on the road of said company on the 11th day of April, 1860, of which the receiver took possession, as stated in said cross bill; and that it is not true that after the giving of said mortgage, said company last named, in consequence of any doubt or apprehension felt by the bondholders under said mortgage, as to whether said mortgage did cover or include all the iron, locomotives, cars, engines, tools, and other personal property belonging to said company, and in order to solve said doubt and secure said property to the bondholders holding bonds issued under said mortgage of December 31, 1856, either apply to, to execute, or did execute said pretended supplemental mortgage therein mentioned in said cross bill; and that the allegations of said cross bill in that behalf are all untrue, and this defendant expressly denies the same.

This defendant admits, on information and belief, that the said La Crosse and Milwaukee Railroad Company, by resolution of its board of directors, did pretend to authorize and direct the execution of said so-called supplemental mortgage mentioned in said cross bill, and did afterwards in form execute the same, and caused it to be recorded in the office of the secretary of state for the state of Wisconsin, as stated in said cross bill.

This defendant, further answering, says, that before the execution of said pretended supplemental mortgage, the said La Crosse and Milwaukee Railroad Company had become, and was, greatly embarrassed in its financial operations and affairs, and that one Newcomb Cleveland was then prosecuting an action against the said company in the district court of the United States for this district, in which the said Cleveland claimed, and said company expected he would recover,

a large sum against said company; and that said company was pressed by its numerous unsecured creditors for payment of its indebtedness, which said company had no means to make; that some attachment suits had been commenced, and others were threatened against the property of said company; and that the said La Crosse and Milwaukee Railroad Company, with the intent and design, and for the express purpose of hindering and delaying and defrauding its creditors, and postponing their just and proper claims upon its property, and especially to hinder, delay, and defraud the said Cleveland, and to hinder, delay, and defraud Vose, Livingston, and Company,
80 of the city and State of New York, which latter firm made claim to a large amount of iron which said company claimed to own, and which had not been laid down upon the track of said company's road, pretended to make and execute and record the said supplemental mortgage; that the same was not solicited by said Bronson, Soutter & Knapp, or either of them, nor by any bondholder secured by said mortgage of December, 1856; that said mortgage was never delivered to the said Bronson, Soutter & Knapp, or either of them, until long after the execution and delivery and registration of the mortgage and supplemental mortgage to the said Barnes, which is set forth in full in the supplemental bill exhibited by this company, and in opposition to which said cross bill is pretended to be filed; and that said mortgage was given without any new or special consideration whatever, and only for the purpose of hindering and delaying and defrauding the creditors of said company, as hereinbefore stated, and that the same was and is absolutely and utterly null and void as against the creditors of said La Crosse and Milwaukee Railroad Company, and as against the said Barnes, the trustee named in said mortgage, to him mentioned as aforesaid, and as as against all the bondholders secured by the said mortgage to said Barnes, and as against this defendant.

This defendant, further answering, says that said pretended supplemental mortgage conveyed nothing but personal property, and was and is a mere chattel mortgage, and that the same was never recorded or filed in pursuance of the laws of the State of Wisconsin in that behalf then in force; and that said chattel mortgage was never renewed by the mortgagees, their agent, or attorney, or any person on their behalf, making and annexing thereto, or to any copy thereof on file according to law, any affidavit setting forth the interest which the said mortgagees had, or claimed to have, by virtue thereof, in the property therein mentioned, according to the provisions of the statute of the State of Wisconsin then in force in that behalf.

And this defendant, further answering, says that by the terms of said pretended chattel mortgage it was and is provided, in substance and effect, that the said Bronson, Soutter & Knapp, mortgagees named therein, were authorized and required to treat the said property pretended to be conveyed thereby in the same manner, and to hold the same upon *upon* the same terms, trusts, and conditions, and for the same purposes as the property mentioned in said mort-
81 gage to them of December, 1856, hereinbefore mentioned,

and not otherwise; and that they might take possession thereof, and sell and dispose of the same, in the same manner, at the same time, and upon the same conditions as they might take possession of, sell, and dispose of the property described in and mortgaged by said mortgage of December, 1856, and not otherwise; and that it was in and by said pretended chattel mortgage expressly provided and agreed that it was the intention of the parties thereto to subject the property described in said chattel mortgage to the operation and effect of said mortgage of December, 1856, and each and every stipulation and covenant therein contained.

And this defendant, further answering, says that the said Bronson, Soutter & Knapp exhibited their bill of complaint on the equity side of the district court of the United States for the district of Wisconsin to foreclose said mortgage of December, 1856, as stated by this defendant in the supplemental bill exhibited by this defendant; and that such proceedings were thereupon had, that afterwards, to wit, on the 13th day of January, 1862, the said district court in said cause rendered and passed a final decree of foreclosure and sale of all the mortgaged premises, which said Bronson, Soutter & Knapp were entitled to claim under and by virtue of said mortgage of December, 1856, which said decree is the same which is set forth in full in the said supplemental bill hereinbefore mentioned; and that the said Bronson, Soutter & Knapp never prayed or perfected any appeal from said decree, but on the contrary thereof, afterwards proceeded to execute the same by selling all the said mortgaged premises according to such decree, under the direction of the marshal of said district, who sold the same on the 25th day of April, A. D. 1863, at the post office in the city of Milwaukee, to William Wallace Pratt and William H. White, and reported said sale, and that said district court afterwards, on the 5th day of May, 1863, confirmed said sale; that thereupon the Milwaukee and St. Paul Railway Company was organized, or pretended to be organized, by the said purchasers and their associates, and immediately thereafter entered into possession of the said mortgaged premises so sold under said decree, and has continued in possession thereof to the present time; and that in the proceedings in said cause, before the final decree therein, the said Bronson, Soutter & Knapp exhibited to said court and filed in said cause, as evidence on their behalf, the said pretended chattel mortgage, which
82 still remains on file in the records and papers of said cause in this court; and that the said Bronson, Soutter & Knapp did not, nor has any one or more of them, pray or take any appeal from said order of confirmation, but immediately after said order was passed claimed the benefit thereof, and entered into and still remain in possession of all the mortgaged property which by the said decree was ordered and directed to be sold, as more fully stated in said supplemental bill. And this defendant here and now claims the benefit, as part of this answer, of all the affirmations, statements, allegations, and exhibits of the said supplemental bill, with the same effect as though the same were herein set out according to their legal effect.

This defendant, further answering, says that the said pretended

chattel mortgage was made and dated subsequent to the making, execution, delivery, and registration of the said mortgage from the said La Crosse and Milwaukee Railroad Company to the said Bronson & Soutter on the eastern division of said railroad, mentioned and stated in said supplemental bill.

And this defendant, further answering, says that in the said suit and foreclosing of said mortgage on said eastern division, mentioned in said supplemental bill, such proceedings have hereupon been had that on the 28th day of April, 1864, this court made an order therein, directing Hans Crocker, the receiver in said cause, to file in said court therein a continuous monthly account of his receipts and disbursements as receiver from the time of his appointment, including the receipts and disbursements of the Milwaukee and St. Paul Railway Company from the 12th day of June, 1863, by the 1st day of June then next, and that any person interested might examine the same and file exceptions thereto, and that H. L. Palmer, esquire, be appointed the auditor to report upon the same to the then next term of this court.

And afterwards, on the 8th day of October, 1864, this court, in said cause, made an order that the said order of 28th of April, 1864, should be modified, as follows:

That Hans Crocker, receiver, should file in the office of the clerk of this court, on or about the 20th day of November then next, a detailed account of his receipts and disbursements as receiver, from the 1st day of June to the 31st day of October, 1864, inclusive; that any parties to said cause might, within ten days after such account should be filed, file exceptions thereto, that such account and the exceptions thereto be referred to the said auditor appointed by said order of April 28th, 1864, to examine and report thereon, in
83 like manner as upon the accounts and exceptions referred by said former order; that said auditor should ascertain and report what should be charged for the use of the rolling stock formerly used on said railroad, as part of the accounts reported by him; that the said auditor should ascertain and report what sum should be allowed to the receiver for his services and expenses as receiver, and whether the receiver was subject to any and what contingent liabilities accruing out of his receivership, and the amount and nature thereof; and that said auditor should report thereon, with all convenient speed and by the first Monday of March, 1865; and that the said receiver should also file with the clerk of this court, on or before the 20th day of March, 1865, an account of his receipts and disbursements as receiver, from the 1st day of October, 1864, to the last day of February, 1865, both inclusive; that any of the parties to said suit might, within five days after such account should be filed, file exceptions thereto, and that said last mentioned account and exceptions thereto be referred to said Palmer, auditor as aforesaid, to examine and report thereon by the first day of the next term of this court; that under and in pursuance of said order and modification, the said Palmer heard all the parties in interest, and particularly this defendant and the Milwaukee and St. Paul Railway Company, and

afterwards, on or about the 28th day of June, 1865, made his report to said court in said cause, in writing, which remains of record therein, and a copy of which is hereto attached, marked Exhibit No. 1.

And that afterwards both this defendant and the said Milwaukee and St. Paul Railway Company appeared in said court in said cause, and submitted themselves to the jurisdiction of the said court therein, and filed their respective exceptions to the said report of the said auditor; that a copy of the exceptions filed by the said Milwaukee and St. Paul Company is hereto attached, marked Exhibit No. 2.

And that afterwards, on or about the 11th day of July, 1865, this defendant filed further exceptions to the said auditor's report, a copy of which is hereto attached, and marked Exhibit No. 3. And thereupon the said court made an order in said cause that the said Palmer, auditor as aforesaid, should make written report to said court in regard to the matters embraced in said additional or twelfth exception, filed by this defendant to the said auditor's report, and state in the report whether any allowance had been made in and by said report for the use of rolling stock belonging to the eastern division used on the western division or other roads operated by the Milwaukee and
84 Paul Railway Company, from the 1st day of September, 1864, to the 28th day of February, 1865, and if not, report what sums should be allowed therefor; and ordered that said twelfth exception be referred and transmitted to said auditor to be returned by him to this court with his additional report thereon; and that afterwards, on the 14th day of July, 1865, the said auditor made report to said twelfth exception, a copy of which is hereto attached and marked Exhibit No. 4; and afterwards, on the 17th day of July, 1865, the Milwaukee and St. Paul Railway Company in said court in said cause filed its exceptions to said last report of said auditor, a copy of which exceptions is hereto attached, marked Exhibit No. 5; and that afterwards, on the 18th day of July, 1865, this honorable court in said cause made its order on the said several exceptions, a copy of which order is hereto attached and marked Exhibit No. 9.

And this defendant, further answering, says, that in and by said order last mentioned this honorable court did, and did intend to, adjudicate upon the question of the ownership of the rolling stock as claimed by this defendant and by the Milwaukee and St. Paul Railway Company respectively, and did thereby, and did intend to, adjudicate that all the rolling stock which was on the whole road when the receiver was appointed, except the forty box cars specially mentioned and described by their numbers in the said decree in the western division foreclosure suit mentioned in said supplemental bill, belonged to and were owned by this defendant, and that of the rolling stock purchased by the receiver and mentioned in said supplemental bill belonged to and were owned by this defendant; and that of the rolling stock purchased by the receiver and mentioned in said supplemental bill this defendant owned such proportion as $121,178 bears to $26,199, and the said court did in and by said order adjudicate and decree in substance and effect that this defendant

was entitled to have and recover against the said Milwaukee and St. Paul Railway Company, for the use of the rolling stock owned by this defendant upon the roads operated by the Milwaukee and St. Paul Railway Company, and that said adjudication, which still remains in full force, is a complete and binding judgment and decree of this court upon the rights of the said Milwaukee and St. Paul Railway Company in regard to the rolling stock which was on the whole road when the receiver was appointed and that which was purchased by the receiver as hereinbefore stated; and this defendant claims the benefit of and will insist upon said adjudication by way of es-
85 toppel, as conclusive in this cause against the rights pretended and set up by the said Soutter and Knapp in said pretended cross bill.

And this defendant, further answering, says, that in the said suit in favor of the said Bronson and Soutter, to foreclose the said mortgage on the eastern division mentioned in said supplemental bill, this honorable court, on the 27th day of September, 1864, made its decree therein, a copy of which is hereto attached and marked Exhibit No. 7. And afterwards, on the 18th day of July, 1865, the said court made two orders in said cause, copies of which are hereto attached and marked Exhibits No. 8 and No. 9 respectively. And that afterwards, on the 28th day of September, 1865, said court in said cause made a final decree of sale, a copy of which is hereto attached marked Exhibit No. 10. And this defendant further says that John W. Cary, esquire, was counsel for said Soutter in said cause, and that said decree was prepared by or on advice with said Cary, and that the said Cary was then and ever since has been the solicitor and counsel of said Milwaukee and St. Paul Railway Company, and that the said Milwaukee and St. Paul Railway Company and its officers and directors were owners of a large part of the bonds secured by said mortgage on said eastern division; that said Soutter under said decree last mentioned proceeded to execute the same by sale under the direction of the marshal according to the decree, and the premises and property in said decree described were duly advertised for sale on the 4th day of January, 1866, in pursuance of said decree; and that in the month of December, 1865, the Milwaukee and Minnesota Railroad Company paid to the clerk of this court the amount required by said order hereinbefore mentioned, entitling it to the possession of said premises and property, and that the fund so in court has been distributed by order of the court to the bondholders entitled thereto, including the said Milwaukee and St. Paul Railway Company, its officers and directors. And this defendant will insist upon the said decree and subsequent proceedings under the same as a complete estoppel against the rights set up in said cross bill, and claim the same benefit of the same as though all said matters had been specially pleaded.

This defendant begs leave to have said supplemental bill and all the exhibits thereto attached, and all the exhibits hereto attached, considered as parts of this answer with the same effect as though they were here again repeated and set forth according to their legal effect..

86 This defendant, further answering on information and belief, says, that all the proceedings in said eastern division foreclosure cause, for more than two years prior to the final decree of sale therein, were conducted by and with the advice, consent, concurrence, and assistance of the said John W. Cary, esq., who was the counsel of the said Bronson, Soutter & Knapp, from the time their bill was exhibited as stated in said supplemental bill, and that the said Cary was during all the said two years also the counsel of the Milwaukee and St. Paul Railway Company; that from some time in May, A. D. 1863, the Milwaukee and St. Paul Railway Company were the owners of nearly all the bonds secured by the said mortgage to the said Bronson, Soutter & Knapp, of December, A. D. 1856, and pretended to be secured by said chattel mortgage, and that said last-named company, or its officers and directors, particularly Russell Sage, Frederick P. James, and one Cowdry, (a counsellor of the Supreme Court of the United States, duly licensed to practice both by said court and by the collector of internal revenue of the United States,) were during the said two years the owners of a majority of the bonds secured by the said mortgage to Bronson and Soutter on the eastern division mentioned in said supplemental bill; and that all the proceedings in said eastern division foreclosure suit for more than two years next before the said decree of sale therein were had and conducted by and with the full knowedge, consent, concurrence, and efforts of the said Milwaukee and St. Paul Railway Company, and that said decree of sale in said suit, and the proceedings thereunder as hereinbefore stated, were obtained and conducted with the like consent, concurrence, and efforts of said company and said persons last before named, and the said John W. Cary all that time acting as the solicitor and counsel for said Soutter and Knapp and for said Milwaukee and St. Paul Railway Company. And that the said Milwaukee and Minnesota Railroad Company paid to the clerk of said court in said eastern division cause, as hereinbefore stated, over four hundred and sixty-seven thousand dollars on the faith and credit and relying upon the correctness and binding force of said orders and decree of sale in said cause so obtained by the efforts of the said last-named company and the said persons before named, the greater portion of which money has already been distributed by order of this court in said cause to the said Milwaukee and St. Paul Railway Company, its officers and directors above named, and others, with the consent, concurrence, and efforts of said last-named company, said Sage,

87 Cowdry, James, and others interested in said last named company, and the said John W. Cary, who appears of record in said cause as the solicitor of the said Soutter and said Knapp, and also as the solicitor of the said Milwaukee and St. Paul Railway Company; and this defendant is advised and insists that by virtue of the said proceedings the said Soutter and Knapp and the said Milwaukee and St. Paul Railway Company are precluded and estopped in equity and good conscience to question the correctness of the said decree under and on the faith and credit of which this defendant has paid said large sum of money which has been claimed by and disbursed by the court

to said company last named, its officers and agents, under the said decree of sale so obtained as before stated.

This defendant begs leave to refer the record of the proceedings in said eastern division foreclosure suit, and also to the record of the proceedings in said western division foreclosure suit, now remaining in this court, with the same effect as though the same were here fully set forth according to their legal effect, and claims the same benefit of the several matters here stated as though it pleaded the same.

And the said defendant prays to be dismissed from any further suit on said pretended cross bill, with its costs most wrongfully sustained.

The Milwaukee and Minnesota Railroad Company, by
[SEAL.] A. FLEMING, *Vice President.*
MATT. H. CARPENTER,
*Solicitor and of Counsel for the said*
*Milwaukee & Minnesota R. R. Co.*

88 *Exhibit No.* 1.

Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c., *vs.* THE LA CROSSE AND MILWAUKEE Railroad Company and others. } In equity.

To the honorable circuit court of the United States for the district of Wisconsin:

In pursuance of an order of reference made in this cause on the twenty-eighth day of April, A. D. 1864, and of an order supplementary thereto made on the eighth day of October, A. D. 1864, modifying the said order of the twenty-eighth day of April, A. D. 1864, and of an order made herein on the seventeenth day of April, A. D. 1865, supplementary to and modifying the orders above mentioned, I, Henry L. Palmer, named in the said several orders as auditor, do respectfully report:

That I have been attended by Hans Crocker, esq., receiver, and by James S. Brown, esq., his counsel, by John W. Cary, esq.,
89 as counsel for the complain'ts and the Milwaukee and St. Paul Railway Company, and by Matt. H. Carpenter, esq., counsel for the Milwaukee and Minnesota Railroad Company and Alexander Fleming, and have taken proofs in regard to the matters referred to me by the said several orders, in addition to the proofs on file and the records of this cause, which proofs are herewith returned and consist of depositions and exhibits.

The exhibits are marked alphabetically from letter A to letter Y, both inclusive. Exhibit E continued, Nos. 1 and 2 following letter Y A A to Y Y Y, No. 4, both inclusive, and from A A A to Z Z Z, both inclusive, and from No. 1 to No. 30, both inclusive; the letter J being omitted in each series of the alphabet.

That Mr. Carpenter, counsel as above, on the 30th day of July,

A. D. 1864, made before me the motion in writing herewith returned and marked Exhibit A, which motion, after argument, I denied, and to this decision Mr. Carpenter, on behalf of his clients, then and there excepted.

That on the same day Mr. Carpenter, counsel as aforesaid, made before me the motion in writing herewith returned and marked Exhibit B, which motion, after argument, I overruled and denied, and to this decision the said Carpenter, on behalf of his clients, excepted.

That afterwards, and on the 25th day of August, A. D. 1864, Mr. Brown, on behalf of the receiver, moved that all testimony as to the relative rights of parties to the suit and others to the earnings of the road be excluded, and that the investigation by the auditor be hereafter limited to ascertaining the correctness or incorrectness of the accounts of the receiver as rendered up to June 1st, 1864; and Mr. Cary, on behalf of the complainants in this case, moved to exclude all testimony relating to the relative rights of the eastern and western division of the road in the fund arising from the operation of the road since the appointment of the receiver; also all testimony relating to money which the receiver might or ought to have had in his hands, which is not now or has not been in his hands, and that the investigation be confined to ascertaining the actual amount of money in his hands subject to the order of the court, which may be applicable to the payment of interest on the mortgage in this suit.

After argument these motions were severally overruled. Messrs. Brown and Carey severally, and in behalf of their respective clients, then and there excepted to such decisions. I further report that the receiver presented to me his books of account kept by him as receiver, and a large mass of vouchers for the expenditures
90 made by him as receiver, which books and vouchers were then present for examination. Thereupon the respective parties before me stipulated and agreed that I should report, and I do therefore report further as follows, pursuant to such stipulations.

That on the first appearance of the respective parties before me, Mr. Carpenter, solicitor as aforesaid, stated that the great mass of the accounts of the receiver would not be attacked before the auditor, by him or his clients; that he would file with the auditor special exceptions to the several items of said account which he intended to attack, and that as to all items not so specially excepted to, the auditor might be excused from the manual labor of examining the vouchers to sustain the same; and the said Carpenter did, in pursuance thereof, file with me said special exceptions to items which are herewith returned and marked respectively Exhibits K K K, and K K K continued.

I further certify and report that Hans Crocker was appointed receiver of the La Crosse and Milwaukee railroad from Portage City to La Crosse, and of the property appertaining thereto in the case of Greene C. Bronson, James T. Soutter, and Shepherd Knapp *vs.* The La Crosse and Milwaukee Railroad Company and others, on the eighteenth day of May, A. D. 1860, and qualified as such receiver on the seventh day of June, A. D. 1860. That he was appointed re-

ceiver of the entire road and appurtenances in the case of Sebre Howard *vs.* The La Crosse & Milwaukee Railroad Company and others, the 9th day of June, 1860, and qualified on the same day. That the last appointment was declared in the order making the same to be "subject, nevertheless, to a prior order of the court appointing him, the said Hans Crocker, to be receiver of the western portion of the said road from Portage City to La Crosse. That the said Hans Crocker was appointed receiver of all the railroad of the said La Crosse & Milwaukee Railroad Company, being all the line of road extending from the city of Milwaukee to the city of La Crosse, in the State of Wisconsin, together with all the depots, depot buildings, and other property belonging to said company, including all property of said company appurtenant to the said road," by an order made in this cause dated July 6, 1860, subject nevertheless to a prior order appointing him, the said Crocker, receiver of the western portion of said road from Portage City to La Crosse. The last-mentioned order did not require any bond to be filed by the receiver, or other qualification as such. That the said Hans Crocker was appointed "receiver of the La Crosse & Milwaukee Railroad Company, under the bill with all the powers of his original appointment, 'by an
91 order of the court made in the case of Bouton *vs.* The La Crosse and Milwaukee Railroad Company and others, on the eight day of October, A. D. 1862.' "

That the receiver took possession of the entire road from Milwaukee to La Crosse, and all its appurtenances, on the eleventh day of June, A. D. 1860, under the order above mentioned in the case of Howard *vs.* The La Crosse and Milwaukee Railroad Company and others, and also of the western division, or that portion of the road extending from Portage City to La Crosse, under the order above mentioned in the case of Bronson, Soutter and Knapp *vs.* The La Crosse and Milwaukee Railroad Company and others, and operated the same as one entire and continuous line of road under said two orders just above mentioned, from the 11th day of June, A. D. 1860, until the 13th day of June, A. D. 1863, and also under the two orders last above mentioned from their respective dates on to the said 13th day of June, 1863.

I further certify and report that the said Hans Crocker, as such receiver, from the 11th day of June, A. D. 1860, to the 28th day of February, A. D. 1865, has received and is chargeable with and accountable for the sum of four million five hundred and seventy-four thousand eighty-five dollars and fifty-seven cents, ($4,574,085 57.) This sum includes the gross earnings and receipts of the entire road from Milwaukee to La Crosse, from the said 11th day of June, A. D. 1860, to the 13th day of June, A. D. 1863, and does not include the earnings of the eastern division of the road from June 13th, 1863, to June 30th, 1864. This amount is obtained by charging the receiver the aggregate amount received by him, as shown by his amount filed in this cause June 1st, 1864, and also the amount received by him as shown by the account herewith returned and marked Exhibit E, continued as follows:

| | |
|---|---|
| Gross amount received from June 11, 1860, to May 31st, 1864, as per account filed June 1st, 1864 | $4,255,821 52 |
| Gross amount received by Hans Crocker, receiver, from June 30, 1864, to February 28, 1865, as shown by account herewith returned and marked Exhibit E continued | 318,264 05 |
| Total | 4,574,085 57 |

That the receiver disbursed from the 11th day of June, A. D. 1860, to the 28th day of February, A. D. 1865, four million five hundred and thirty-eight thousand seven hundred and ninety-eight dol-
92 lars and sixty-one cents, ($4,538,798 61,) which sum, deducted from the aggregate amount received by, and chargeable to the receiver, left a balance remaining in his hands February 28, 1865, of $35,286 96, subject to such allowances as may be made to the receiver for his services.

The particulars in detail of such receipts and disbursements are contained in the receiver's account, filed June 1, 1864, and in the account herewith returned and marked Exhibit E continued. That the disbursements thus made by the receiver, and with which he is credited in his account, include the sum of seventy-three thousand eight hundred and one dollars and ninety-two cents, ($73,801 92,) paid on judgment in favor of Newcomb Cleveland against the La Crosse & Milwaukee Railroad Company; and to this payment special exception is taken by the counsel for the Milwaukee & Minnesota Railroad Company, in and by Exhibit K K K. I have ascertained and report that the several sums paid by the receiver on said Cleveland judgment, making in the aggregate the said sum of seventy-three thousand eight hundred and one dollars and ninety-two cents ($73,801 92) were were paid by him on the authority and in pursuance of two several orders made in the case of Green C. Bronson, James T. Soutter and Shepherd Knapp *vs.* The La Crosse and Milwaukee Railroad Company and others, at the dates and for the amounts following, viz:

| | |
|---|---|
| June 29, 1861, ten thousand dollars | $10,000 00 |
| July 18, 1861, twenty thousand dollars | 20,000 00 |
| And of two orders made in this cause of the dates, and for the amounts following, viz: April 22, 1861, twenty-eight thousand and eight hundred and one dollars and ninety-two cents | 28,801 92 |
| November 28, 1862, fifteen thousand dollars | 15,000 00 |
| | 73,801 92 |

Copies of which orders are herewith returned, and marked respectively exhibits "E E E, F F F, G G G, H H H."

And I further report that the said orders were sufficient and proper authority for the receiver to make such payments, and that the

same were properly made by him. I therefore audit such payments, and allow and credit the same to the receiver at the said amount of $73,801 92, and disallow the said exceptions of the Milwaukee & Minnesota Railroad Company thereto.

Such disbursements include the sum of $24,998 36 expended
93 for new buildings comprising the two items contained in Exhibit C, under the head of new buildings, eastern division $10,757 88, and western division $14,240 48; also the sum of $7,057 13, being the item contained in Exhibit E continued under the head of new buildings for that amount. That portion of those expenditures assigned to the eastern division under the head of new buildings in Exhibit C, viz: $10,757 88, is specially excepted to by the Milwaukee & Minnesota Railroad Company in Exhibit K K K, and the expenditure of $7,707 13 being the item under the head of new buildings in Exhibit E continued is also specially excepted to by the same party in and by Exhibit K K K, continued. I have ascertained and report that the said amounts thus expended by the receiver and credited to him in his said accounts under the head of new buildings were expended in the erection of new buildings which were necessary for the proper operation of the road, and that such expenditures were properly made and were reasonable, and I audit and allow the same to the receiver and disallow the exceptions thereto.

I further report that all the remaining disbursements made by the receiver from June 11, 1860, to May 31, 1864, embraced in his account filed June 1, 1864, and making, with the two items of $73,801 92 paid on the Cleveland judgment, and the item of $24,998 36 expended on new buildings first above mentioned, in the aggregate the sum of four millions one hundred and eighty-five thousand seven hundred and four dollars and forty-four cents, ($4,185,704 44,) were actually made by him in the proper execution of his trust as such receiver, and that he is entitled to credit therefor in his account.

I further report that the disbursements made by the receiver from the 30th day of June, 1864 to the 28th day of February, A. D. 1865, embrace an item of $9,015 16 for "repairs of tools and machinery," contained in the account herewith returned and marked Exhibit E continued, which is specially excepted to by the counsel for the Milwaukee & Minnesota Railroad Company, and by Exhibit R R R continued. I audit and allow this item as a proper expenditure made by the receiver, and for which he is entitled to credit in his account and disallow the exceptions thereto.

The disbursements made by the receiver during the period of time last aforesaid also embrace the sum of thirty-six thousand one hundred eighteen dollars and eighty-six cents, ($36,118 86,) contained in the account herewith returned and marked Exhibit E continued,
under the head of "use of rolling stock." To this credit
94 special exception is also made by the same party in and by Exhibit K K K continued.

That the entire road and rolling stock were placed in the possession of the Milwaukee & St. Paul Railway Company by the orders made by the court in the several cases on the 12th day of June, 1863, one of which orders, viz: the order in the case of Bronson, Soutter

and Knapp, against the La Crosse & Milwaukee Railroad Company and others, on the 12th day of June, A. D. 1863, still remains in full force, and not reversed or rescinded. The rolling stock remained in the possession of the Milwaukee & St. Paul Company by virtue of the order last mentioned, and this sum is charged by that company to the receiver for use of rolling stock thus in its possession. That this item is a proper credit to the receiver in his account, and as between the eastern division and its owners and the Milwaukee & St. Paul Railway Company should be adjusted auditing the account of the latter company. I therefore audit it and allow this item to the receiver as a proper disbursement made by him for which he is entitled to credit and disallow the exceptions thereto.

The third item mentioned in the special exception of the Milwaukee & Minnesota Railroad Company contained in Exhibit K K K continued to the account marked "Exhibit E continued" as follows: Milwaukee & St. Paul Company $109,950 82, I suppose to refer to the 38th item contained in Exhibit E, and is not appropriate to any credit continued in *in* Exhibit E continued, and I disallow said special exception so far as it related to any part of the account marked Exhibit E continued; all the other items contained in the credit side of the account marked Exhbit E continued, I audit and allow to the receiver as credits to which he is entitled for disbursements properly made by him in the execution of his trust as such receiver. I have ascertained and further report that from the eleventh day of June, 1860, to the thirteenth day of June, 1863, the said Hans Crocker, receiver, operated and managed the business of the said railroad as one entire line of road extending from Milwaukee to La Crosse, and received and kept and disbursed the income thereof as one common fund; and that during the period of time aforesaid his account of receipts and disbursements as receiver was kept as one general account of the income derived by him from the business of the entire road, and the expenditures made by him in the operation of the entire road, without separation or division, except as to local earnings and local expenses;

95 and that the road was properly operated in that manner, the income was properly treated by the receiver as a common fund and the disbursements on account of the entire line of road were properly made therefrom.

I have ascertained and report that the sum of thirty-eight thousand five hundred and sixty-nine dollars and forty-two cents should be allowed to the receiver for his services as receiver from the 11th day of June, 1860, to and including the 28th day of February, 1865. This amount is made up as follows, viz:

| | |
|---|---|
| For services as receiver from the 11th day of June, 1860, to the 11th June, 1863, three years, at $10,000 per year..... ..... | $30,000 00 |
| For services as receiver from the 11th June, 1863, to the 28th February, 1865, one year, eight months, and seventeen days, at the rate of $5,000 per year | 8,569 42 |
| Total.... ..... ..... | 38,569 42 |

I have also ascertained and further report that the following sums should be allowed to the receiver for his expenses paid and incurred by him as receiver and not credited to him in his account as filed, viz:

| | |
|---|---|
| The amount of Cary & Pratt's account against the receiver for professional services rendered in 1860 and 1861, and embraced in the account marked Exhibit L L L | $1,150 00 |
| The amount of Cary & Pratt's account for professional services as attorneys and counsel for receiver from 27th October, 1860, to 12th June, 1864, allowed as charged in Exhibit M M M | 5,435 00 |
| For account of Cary & Pratt for disbursements made by by them as attorneys for receiver in professional business transacted by them for receiver allowed, as charged in account marked Exhibit N N N | 514 23 |
| For account of Cary & Pratt for services as attorneys and counsel for receiver from Sept. 22, 1864, to March, 1865, allowed as charged in Exhibit X X X | 700 00 |
| For the account of James S. Brown for professional services as attorney and counsel for receiver, allowed as charged in the account marked Exhibit No. 12 | 1,600 00 |
| Total amount of expenses | 9,399 23 |
| Add amount of allowance for services as receiver as above | 38,569 42 |
| Total for services and expenses | 47,968 65 |

96 I have further ascertained and report that the receiver is subject to the following contingent liabilities growing out of his receivership, and that the amount and nature of the estate of each is as hereinafter stated:

| | |
|---|---|
| First, a claim of Frany Loof, administrator of the estate of Nicholas Thull, deceased, for five thousand dollars damages claimed for the death of said Thull, alleged to have been killed in consequence of the negligence of employees on the road while operated by the receiver; an action is pending on this claim against the receiver in the circuit court of Milwaukee co | $5,000 00 |
| A claim of Peter Roth, administrator of the estate of Matthias Schule, deceased, for five thousand dollars damages, claimed for the death of said Schule, alleged to have been killed in consequence of the negli operation of the road by employees; an action was brought on this claim in the circuit court of Milwaukee county, and was tried at the last term of that court, and the trial resulted in the plaintiffs being nonsuited | 5,000 00 |

| | |
|---|---|
| Also a claim of Joseph Leutes for ten thousand dollars for damages sustained by the breaking of his leg to such extent as to render subsequent amputation necessary, alleged to have been the result of negligent management of a train of cars by employees; on this claim an action was commenced in the circuit court of Monroe county, which has been removed to, and is now pending in the circuit court of Milwaukee county; amount claimed..... | $10,000 00 |
| Total amount of contingent claims..... | 20,000 00 |

Schedule First, hereto annexed, states the account of the receiver as audited.

I further report that the Milwaukee and St. Paul Railway Company took possession of the eastern division of the La Crosse and Milwaukee railroad, extending from Milwaukee to Portage City, and of all the rolling stock and appurtenances thereon and belonging thereto, including tools, machinery, and supplies then on hand, pursuant to orders of the court made on the 12th day of June, 1863, as well as of the western division, or that portion of said road extending from Portage City to La Crosse, and operated the same, and received the earnings thereof, and made disbursements therefor, from that date to and including the 30th day of June, A. D. 1864; that Exhibit E, herewith returned, contains a statement of the earnings of said road from Milwaukee to Portage City received by the said Milwaukee and St. Paul Railway Company, and the disbursements made by the said company on account of said road between the dates last aforesaid, as claimed by said company to item No. 7 contained in this account, which is a credit to the Milwaukee and St. Paul Railway Company, as follows: "Repairs, tools, &c., $6,978 83," the Milwaukee and Minnesota Railroad Company takes special exception in and by Exhibit K K K. This credit is for the sum
97 named, expended in the repairs of tools and machinery, and as it is taken into consideration in determining the rent or compensation chargeable to the Milwaukee and St. Paul Railway Company for the use of repair shops and tools in a subsequent part of this report, I allow and audit the amount to the Milwaukee and St. Paul Railway Company as a proper expenditure and credit, and disallow the exception thereto.

The item No. 28, contained on the credit side of the account, Exhibit E, new buildings, $27,497 84, is also specially excepted to by the Milwaukee and Minnesota Railroad Company in and by Exhibit K K K. I have ascertained and report that this sum was expended for the erection of new buildings on the machine shop grounds in Milwaukee, extension of depot buildings, erection of water houses, and other improvements on the eastern division; that all these erection were not necessary for the eastern division, operated as a road, commencing at Milwaukee and terminating at Portage City, and not forming a part of a through route to the Mississippi river; that these

improvements were projected and commenced, and the expenditure mainly made while the two divisions of the road were operated together as one through line, and before the opening of another route from Portage City to Milwaukee was contemplated, and that as the said railroad from Milwaukee to Portage City was then circumstanced these buildings and improvements were necessary to its proper and profitable operation, and the expenditure was properly and prudently made. I therefore audit and allow this credit, amounting to said sum of $27,497 84, to the Milwaukee and St. Paul Railway Company, and disallow the said exception thereto.

The credit contained in Exhibit E, and marked No. 38, as follows: "Milwaukee and St. Paul Railway, $109,950 82," is specially excepted to by the Milwaukee and Minnesota Railroad Company in and by Exhibit K K K. This credit is made up of the following items, viz:

| | |
|---|---|
| Paid receiver April 23d, 1864 | $68,285 50 |
| Charge for the earnings of the western division from June 1st to June 12th, 1863, inclusive | 20,761 17 |
| Mileage on western division from April 25th to May 1st, 1865, inclusive | 2,396 48 |
| Same, May 1st to June 1st, 1863 | 11,958 02 |
| Same, June 1st to June 12th, 1863 | 4,672 79 |
| Advance charges on goods in transit, June 13, 1863 | 1,886 86 |
| | 109,950 82 |

It contains a credit to the Milwaukee and St. Paul Railway Company of $19,027 29, for the use of rolling stock from April 25, 1863, to and including June 12, 1863, upon the theory that said company owned and was entitled to charge for the use of all the rolling stock on the road at that date, except the proportion of the stock purchased by the receiver which belonged to the eastern division under the provisions of the decree in the land grant case, which vested the title of that stock in the owners of the respective divisions in proportion to their net earnings from the 11th June, 1860, to the date of the decree. Applying to this credit the principle by which I determine and report what should be charged for the use of rolling stock formerly used on said railroad, as a part of the accounts reported by me, I report that the Milwaukee and St. Paul Railway Com-
98 pany is entitled to a credit in this item for mileage of rolling stock, for which credit is therein given to said company for the sum of $1,847 60, and is not entitled to credit for the additional sum of $17,179 69 embraced therein, and I sustain the said exception so far as it relates to the said $17,179 69, and deducting the last named amount from the amount of said credit, I audit and allow the same at the balance thereof, that is to say, $92,771 13, and I disallow said exception so far as the said relates to such balance.

The said Exhibit E contains a credit to the Milwaukee and St. Paul Railway Company under the head "Use of rolling stock," $166,192 30, marked No. 39, which is also specially excepted to by

the Milwaukee and Minnesota Railway Company in and by Exhibit K K K: and I am also directed by the order made by the court in this cause on the 8th day of October, 1864, to "ascertain and report what should be charged for the use of rolling stock formerly used on said railroad as a part of the accounts reported by" me. The disposition of the last mentioned exception, and the proper performance of the duty imposed upon me by the order above mentioned, involve an inquiry into the ownership and amount of the rolling stock on the road on the 13th day of June, 1863; and I have ascertained and report that under the adjudications made by the district and circuit courts in this case and in the case of Bronson, Soutter, and Knapp *vs.* The La Crosse and Milwaukee Railroad Company and others, and by the Supreme Court of the United States in the case of The Milwaukee and Minnesota Railroad Company *vs.* James T. Soutter, survivor, &c., forty box-cars, and such proportion of the rolling stock as was purchased and put on the road by the receiver as the net earnings of the western division, from the 11th of June, 1860, to the 13th day of January, 1862, bear to the net earnings of the eastern division for the same period of time, was owned by the Milwaukee and St. Paul Railway Company. And that all the remaining rolling stock on the road, on the 13th day of June, 1863, belonged to and was owned by the owners of the eastern division of said road. That the total value of the rolling stock on the said railroad on the 13th day of June, 1863, including the stock owned by the Milwaukee and St. Paul Railway Company, was $659,295 58; that the value of the share owned by the Milwaukee and St. Paul Railway Company was $52,199 00; and the value of the share owned by the owners of the eastern division was $607,096 88; that the respective owners of such rolling stock are each entitled to charge the other for the use of the rolling stock on the respective divisions of the road in the proportion of their ownership as above stated, and are chargeable with the repairs of their respective shares of the rolling stock; that the evidence before me does not afford the data from which the amount which should be charged to the respective parties for the use of
99 rolling stock from the 13th day of June, 1863, to the 28th day of February, 1865, can be ascertained with accuracy, but an approximate result is obtained which is believed to be substantially correct. I have ascertained and report that the Milwaukee and St. Paul Railway Company should be charged, in favor of the receiver representing the eastern division, for the use of the share of the rolling stock belonging to the eastern division, on the western division, and on its other road, from the 13th day of June, 1863, to the 28th day of February, 1865, $123,374 40; that the sum of $36,118 86, charged to the receiver by the Milwaukee and St. Paul Railway Company for the use of rolling stock from June 30th, 1864, to February 28th, 1865, contained in Exhibit E continued, should be charged back to said company.

That the Milwaukee and St. Paul Railway Company, on the 13th day of June, 1863, received from the receiver, with the road and rolling stock, tools and supplies belonging to the entire road, includ-

ing supplies on the eastern division, amounting in value, as per receiver's inventory, Exhibit No. 74, $65,035 07. That these supplies belonged to the owners of respective divisions of the road in proportion to the amount of the rolling stock owned by each; that the proportion of such supplies which belonged to the eastern division was in value $58,885 98, and that the Milwaukee and St. Paul Railway Company is chargeable with that amount; that the Milwaukee and St. Paul Railway Company is entitled to credit, as against the receiver representing the eastern division, for the use of their share of the rolling stock on the eastern division, from the 13th of June, 1863, to the 28th of February, 1865, $19,667 00; and also for repairs of the share of the rolling stock belonging to the eastern division for the same time, $275,536 53; and the amount which the Milwaukee and St. Paul Railway Company credited to the receiver for the use of the rolling stock of the eastern division, on its roads, from the 30th of June, 1864, to the 28th of February, 1865, viz: 5,767 53, and contained in Exhibit E continued, should be credited to the said Milwaukee and St. Paul Railway Company in its account; that the Milwaukee and St. Paul Railway Company should be charged with the amount which is charged by said company, to the receiver, as shown in Exhibit E continued, for repairs of locomotives, $10,569 36, and the amount there charged for repairs of cars, $16,280 87; all use of rolling stock and all charges for repairs thereto being embraced in the charges and credits for use of rolling stock and for repairs of rolling stock to be made as above stated.

I further report that the Milwaukee and St. Paul Railway Company received with the eastern division of the said railroad, June 13th, 1863, 13,903 cords of wood, which was worth $2 50 per cord, amounting to the sum of $34,757 50; and as the eastern division is charged in the account of said company with all the fuel used thereon,
100 this amount is a proper charge against it. It is also proper to charge the Milwaukee and St. Paul Company with the transportation of 1,300 tons of iron rails over the eastern division from Milwaukee to Portage City, for its road between Portage City and Columbus, at $1 25 per ton, amounting to $1,625 00, and also with the transportation of 36 car loads of ties over the eastern division, at $10 per load—$360 00; and the said company is also chargeable with and accountable for the gross earning of the eastern division, from the 13th day of June, 1863, to the 30th day of June, 1864, amounting as shown by Exhibt E, to $960,616 80, and I report that all the remaining expenditures and disbursements made by the Milwaukee and St. Paul Railway Company, and set forth in Exhibit E as credits, (except the items hereinbefore especially mentioned, and the items therein contained No. 5 and 6, being for repairs of locomotives, $8,433 79, and repairs of cars, $19,990 20,) were actually and properly made by the said company and are allowed and audited as proper expenditures duly made, and for which said company is entitled to credit.

I have further ascertained and report that adjusting the account of the Milwaukee and St. Paul Railway Company upon the principles

above stated, the said company is chargeable with and accountable for the sum of one million two hundred and fifty-two thousand one hundred and thirty 43-100 dollars ..... $1,252,130 43

And it is entitled to credits amounting in the aggregate to nine hundred and twenty-five thousand eleven 91-100 dollars ..... 925,011 91

Leaving a balance ..... 327,118 52

Due by said company to the receiver of three hundred and twenty-seven thousand one hundred and eighteen 52-100 dollars.

I further report that the income of the eastern division of the road, for the months of May and June 1864, was received and the operating expenses thereof for the same time were disbursed by the Milwaukee and St. Paul Railway Company, and are embraced in the account of said company as credited; that the receiver took possession of the eastern division of the road on the 1st day of May, 1864, but the income and disbursements thereof for said months of May and June, 1864, are not embraced either in the account of the receiver filed June 1st, 1864, or with the account herewith returned and marked Exhibit E continued. The earnings and disbursements of the eastern division for the two months mentioned are properly carried into the account of the Milwaukee and St. Paul Railway Company, but as the receiver took possession of the road on the 1st day of May, 1864, he is chargeable with its earnings and accountable for its management from that time, and he is chargeable with the net
101 earnings of the eastern division for the two months named, in addition to the amount embraced in his account as audited.

That the net earnings of the eastern division for May and June, 1864, amount to the sum of forty-seven thousand five hundred and fifty-seven 42-100 dollars .... $47,557 42

This amount added to the balance in the receiver's hands Feb. 28th, 1865, viz ..... 25,286 96

Would leave a balance in his hands ..... 82,844 38

At that date eighty-two thousand eight hundred and forty-four 38-100 dollars.

Subject to such allowance as may be proper for his services as receiver, and for expenditures made and incurred by him for legal services heretofore rendered as above set forth.

And I further report that I have considered and examined the several exceptions of Alexander Fleming and the Milwaukee and Minnesota Railroad Company to the account of the said Hans Crocker, receiver, filed June 1st, 1864, and the supplemental account filed June 28th, 1864, and that the said exceptions filed by each of said parties, and respectively numbered from No. 1 to No. 8 inclusive, are not well taken, and are each and all of them disallowed.

H. L. PALMER.

A.

SCHEDULE FIRST.

| Hans Crocker, receiver, | | Dr. |
|---|---|---|
| To gross receipts as receiver, from June 11, 1860, to May 31, 1866, as shown by account filed June 1st, 1864 | | $4,255,821 52 |
| To gross receipts as receiver from June 30th, 1864, to February 28th, 1865, as shown by Exhibit E continued | | 318,264 05 |
| | | 4,574,085 57 |
| By expenditures from June 11th, 1860, to May 31st, 1864, as shown in detail by receiver's accounts filed June 1st, 1864 | $4,185,704 44 | |
| By expenditures from June 30th, 1864, to February 28th, 1865, as per Exhibit E continued | 353,094 17 | |
| | | 4,538,798 61 |
| Balance in hands of receiver Feb. 28th, 1865 | | 35,286 96 |
| By amount allowed receiver for services from June 11th, 1860, to Feb. 28th, 1865 | 38,569 24 | |
| By amount due to Cary and Pratt for professional services allowed as receiver | 1,150 00 | |
| By amount due Carey and Pratt for professional services allowed as receiver | 5,435 00 | |
| By amount due Carey and Pratt for professional services allowed as receiver | 514 23 | |
| By amount due Cary and Pratt for professional services allowed as receiver | 700 00 | |
| By amount due James S. Brown for professional services allowed to receiver | 1,600 00 | |
| | | 47,968 65 |
| Balance due receiver | | 12,681 69 |
| Contingent claims against the receiver at the amount claimed | | $20,000 00 |

| | |
|---|---|
| Amount of net earnings for the months of May and June, 1864 | $47,557 42 |
| Add balance Feb. 28th, 1865, as above | 35,286 96 |
| | 82,844 38 |
| Deduct allowances as above | 47.968 65 |
| Balance | 34,875 73 |

B.

SCHEDULE SECOND.

Milwaukee and St. Paul Railway Co., in account with Hans Crocker, receiver.

| | | |
|---|---|---|
| To gross earnings eastern division La Crosse and Milwaukee railroad from June 13, 1863, to June 30, 1864 | $960,616 80 | |
| To use of railway stock belonging to eastern division from June 13, 1863, to Feb. 28th, 1865 | 123,374 40 | |
| To this amount charged receiver for use of rolling stock from June 30, 1864, to Feb. 28th, 1865, in Exhibit E continued, now charged back | 36,118 86 | |
| To amount of supplies received with and belonging to the eastern division June 13, 1863 | 59,885 98 | |
| 103 To amount charged receiver for repairs of locomotives from June 30, 1864, to Feb. 28, 1865, Exhibit E continued | 10,569 36 | |
| To amount charged receiver for repairs of cars from June 30, 1864, to Feb. 28th, 1865, in Exhibit E continued | 16,280 87 | |
| To 13,903 cords wood received with eastern division June 13, 1863, at $2.50 per cord | 34,757 50 | |
| To 1,300 tons iron transported on eastern division | 1,625 00 | |
| To 36 car loads ties transported on eastern division | 360 00 | |
| To rent of repair shops, tools, and machinery on and belonging to eastern division from 13, 1863, to Feb. 28, 1864—1 year, 8 months, and 10 days, valued at $50,000, at 10 per cent | 8,541 66 | |
| | | $1,252,130 43 |

| | | |
|---|---|---|
| By items of credit contained in Exhibit E, excluding the amount of items Nos. 4, 5, 78 and 41. 42.... | $531,269 72 | |
| By credit in item No. 38, Ex. E, at the amount at which the same is audited..... | 92,771 13 | |
| By use of rolling stock of Milwaukee and St. Paul company on eastern division from June 13, 1863, to Feb. 28, 1865..... | 19,667 00 | |
| By repairs of rolling stock of eastern division by Milwaukee and St. Paul Company..... | 275,536 53 | |
| By amount credited to the receiver for use of rolling stock of eastern division on roads of St. Paul Company, as shown by Exhibit E continued..... | 5,767 53 | |
| | | $925,011 91 |
| By balance nue the receiver by St. Paul company... | | 327,118 52 |

104 *Exhibit No. 2.*

Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD *et al.*

The exceptions of the Milwaukee and St. Paul Railway Company to the report of Henry L. Palmer, auditor, filed in this cause on the 28th day of June, 1865:

First. The Milwaukee and St. Paul Railway Company excepts to so much of said report as disallows its claim for the use of rolling stock as charged and contained in Exhibit E, and E continued, attached to said report as follows, to wit: 1st, item No. 39, of Exhibit E for the sum of $166,192 30. 2d, item No. of Exhibit E continued for the sum of $36,118 86. 3d, so much of item No. 38 of Exhibit E as was disallowed by said auditor, amounting to the sum of $17,179 69; all of which amounts should have been allowed and credited as contained in said Exhibit E. and E continued.

Second. The Milwaukee and St. Paul Railway Company excepts to so much of said report as finds that only forty box cars and such proportion of the rolling stock as was purchased and put on the road by the receiver, as the net earnings of the western division, from the 11th day of June, 1860, to the 13th day of January, 1862, bear to the net earnings of the eastern division for the same period of time, is owned by the Milwaukee and St. Paul Railway Company, and that all the remaining stock on the road on the 13th day of June, 1863,

belonged to and was owned by the owners of the eastern division of said road.

Third. The Milwaukee and St. Paul Railway Company excepts to so much of said report as charges it for the use of the share of the rolling stock belonging to the eastern division on the western division, and on its other roads, from the 13th day of June, 1863, to the 28th day of February, 1865, the sum of $123,374 40; whereas the auditor should have found and reported that no part of said rolling stock which was on said road on the 11th day of June, 1860, when the receiver took possession, was in the possession or under the control of said receiver, or of the Milwaukee and St. Paul Railway Company as receiver, or in the custody or control of the court after the 12th
104½ day of June, 1863, but that the same was in the possession and control of the Milwaukee and St. Paul Railway Company as owner.

Fourth. The Milwaukee and St. Paul Railway Company excepts to so much of said report as finds that the tools and supplies belonging to the entire road belonged to the owners of the respective divisions of the road, in proportion to the amount of the rolling stock owned by each.

Fifth. The Milwaukee and St. Paul Railway Company excepts to said report so far as it finds that said Milwaukee and St. Paul Railroad Company should be charged with the sum of $59,885 98 for supplies received by them June 13, 1863, and the sum of $34,757 50 for wood received at the same time; whereas such supplies and wood are necessarily appurtenant to the road, and said report should have provided that the wood and supplies now on hand on said division should be received in lieu of those received by said Milwaukee and St. Paul Railway Company on said 13th day of June, 1863, or at least they should be so received to the extent of the value of the supplies and wood now on hand on said division.

(S'g'd) JOHN W. CARY,
*Solicitor for M. & St. P. Rw. Co.*

*Exhibit No.* 3.

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

The Milwaukee and Minnesota Railroad Company comes here into court, and takes and shows the court (by leave of the court expressly granted for that purpose) an additional exception to the report of H. L. Palmer, auditor, appointed to report on the receiver's accounts in this cause, as follows:

12th exception. For that the said auditor has, in regard to the charge which the Milwaukee and Minnesota Railroad Company claims

should be made for use of and repairs of rolling stock belonging to the eastern division, used upon the western division, reported to said court as follows, viz:

The said Exhibit E contains a credit to the Milwaukee and St. Paul Railway Company, under the head "use of rolling stock,"
105 $166,192 30, marked No. 39, which is also specially excepted to by the Milwaukee and Minnesota Railway Company in and by Exhibit K K K; and I am also directed by the order made by the court in this cause, on the 8th day of October, 1864, to "ascertain and report what should be charged for the use of rolling stock formerly used on said railroad as a part of the accounts reported by" me. The disposition of the last-mentioned exception, and the proper performance of the duty imposed upon me by the order above mentioned, involve an inquiry into the ownership and amount of the rolling stock on the road on the 13th day of June, 1863; and I have ascertained and report that under the adjudications made by the district and circuit courts in this case, and in the case of Bronson Soutter, and Knapp *vs.* The La Crosse and Milwaukee Railroad Company and others, and by the Supreme Court of the United States in the case of the Milwaukee and and Minnesota Railroad Company *vs.* James T. Soutter, survivor, &c., forty box cars and such proportion of the rolling stock as was purchased and put on the road by the receiver, as the net earnings of the western division, from the 11th day of June, 1860, to the 13th day of January, 1862, bear to the net earnings of the eastern division for the same period of time, was owned by the Milwaukee and St. Paul Railway Company; and that all the remaining rolling stock on the road, on the 13th day of June, 1863, belonged to and was owned by the owners of the eastern division of said road. That the total value of the rolling stock on the said railroad on the 13th day of June, 1863, including the stock owned by the Milwaukee and St. Paul Railway Company was $659,295 88; that the value of the share owned by the Malwaukee and St. Paul Railway Company was $52,199 00, and the value of the share owned by the owners of the eastern division was $607,096 88; that the respective owners of such rolling stock are each entitled to charge the other for the use of rolling stock on the respective divisions of the road in the proportion of their ownership, as above stated, and are chargeable with the repairs of their respective shares of the rolling stock; that the evidence before me does not afford the data from which the amount which should be charged to the respective parties for the use of rolling stock from the 13th day of June, 1863, to the 28th day of February, 1865, can be ascertained with accuracy, but an approximate result is obtained which is believed to be substantially correct. I have ascertained and report that the Milwaukee and St. Paul Railway Company should be charged, in favor of the receiver representing the eastern division, for the use of the share of the rolling stock belonging to the eastern division, on the western division and on its other roads, from the 13th day of June, 1863, to the 28th day of February, 1865, $123,374 40; that the sum of $36,118 86
106 charged to the receiver by the Milwaukee and St. Paul Rail-

belonged to and was owned by the owners of the eastern division of said road.

Third. The Milwaukee and St. Paul Railway Company excepts to so much of said report as charges it for the use of the share of the rolling stock belonging to the eastern division on the western division, and on its other roads, from the 13th day of June, 1863, to the 28th day of February, 1865, the sum of $123,374 40; whereas the auditor should have found and reported that no part of said rolling stock which was on said road on the 11th day of June, 1860, when the receiver took possession, was in the possession or under the control of said receiver, or of the Milwaukee and St. Paul Railway Company as receiver, or in the custody or control of the court after the 12th
104½ day of June, 1863, but that the same was in the possession and control of the Milwaukee and St. Paul Railway Company as owner.

Fourth. The Milwaukee and St. Paul Railway Company excepts to so much of said report as finds that the tools and supplies belonging to the entire road belonged to the owners of the respective divisions of the road, in proportion to the amount of the rolling stock owned by each.

Fifth. The Milwaukee and St. Paul Railway Company excepts to said report so far as it finds that said Milwaukee and St. Paul Railroad Company should be charged with the sum of $59,885 98 for supplies received by them June 13, 1863, and the sum of $34,757 50 for wood received at the same time; whereas such supplies and wood are necessarily appurtenant to the road, and said report should have provided that the wood and supplies now on hand on said division should be received in lieu of those received by said Milwaukee and St. Paul Railway Company on said 13th day of June, 1863, or at least they should be so received to the extent of the value of the supplies and wood now on hand on said division.

(S'g'd) JOHN W. CARY,
*Solicitor for M. & St. P. Rw. Co.*

*Exhibit No.* 3.

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

The Milwaukee and Minnesota Railroad Company comes here into court, and takes and shows the court (by leave of the court expressly granted for that purpose) an additional exception to the report of H. L. Palmer, auditor, appointed to report on the receiver's accounts in this cause, as follows:

12th exception. For that the said auditor has, in regard to the charge which the Milwaukee and Minnesota Railroad Company claims

should be made for use of and repairs of rolling stock belonging to the eastern division, used upon the western division, reported to said court as follows, viz:

The said Exhibit E contains a credit to the Milwaukee and St. Paul Railway Company, under the head "use of rolling stock,"
105 $166,192 30, marked No. 39, which is also specially excepted to by the Milwaukee and Minnesota Railway Company in and by Exhibit K K K; and I am also directed by the order made by the court in this cause, on the 8th day of October, 1864, to "ascertain and report what should be charged for the use of rolling stock formerly used on said railroad as a part of the accounts reported by" me. The disposition of the last-mentioned exception, and the proper performance of the duty imposed upon me by the order above mentioned, involve an inquiry into the ownership and amount of the rolling stock on the road on the 13th day of June, 1863; and I have ascertained and report that under the adjudications made by the district and circuit courts in this case, and in the case of Bronson Soutter, and Knapp *vs.* The La Crosse and Milwaukee Railroad Company and others, and by the Supreme Court of the United States in the case of the Milwaukee and and Minnesota Railroad Company *vs.* James T. Soutter, survivor, &c., forty box cars and such proportion of the rolling stock as was purchased and put on the road by the receiver, as the net earnings of the western division, from the 11th day of June, 1860, to the 13th day of January, 1862, bear to the net earnings of the eastern division for the same period of time, was owned by the Milwaukee and St. Paul Railway Company; and that all the remaining rolling stock on the road, on the 13th day of June, 1863, belonged to and was owned by the owners of the eastern division of said road. That the total value of the rolling stock on the said railroad on the 13th day of June, 1863, including the stock owned by the Milwaukee and St. Paul Railway Company was $659,295 88; that the value of the share owned by the Malwaukee and St. Paul Railway Company was $52,199 00, and the value of the share owned by the owners of the eastern division was $607,096 88; that the respective owners of such rolling stock are each entitled to charge the other for the use of rolling stock on the respective divisions of the road in the proportion of their ownership, as above stated, and are chargeable with the repairs of their respective shares of the rolling stock; that the evidence before me does not afford the data from which the amount which should be charged to the respective parties for the use of rolling stock from the 13th day of June, 1863, to the 28th day of February, 1865, can be ascertained with accuracy, but an approximate result is obtained which is believed to be substantially correct. I have ascertained and report that the Milwaukee and St. Paul Railway Company should be charged, in favor of the receiver representing the eastern division, for the use of the share of the rolling stock belonging to the eastern division, on the western division and on its other roads, from the 13th day of June, 1863, to the 28th day of February, 1865, $123,374 40; that the sum of $36,118 86
106 charged to the receiver by the Milwaukee and St. Paul Rail-

way Company for the use of rolling stock from June 30th, 1864, to February 28th, 1865, contained in "Exhibit E continued," should be charged back to said company; which report shows that the sum allowed by the auditor, viz: $123,374 40, was arrived at by the auditor upon the supposition that Exhibit E and continuation of Exhibit E contained a credit for the use of a certain amount of rolling stock, down to February 28, 1865, and the report allows for the use of rolling stock belonging to the eastern division at the same rate for the different amount in value, whereas the said Exhibit E and continuation of Exhibit E did not contain any charge or credit whatever for rolling stock after September 1, 1864, as appears from the monthly reports filed in this cause, and as appears from the testimony of E. H. Goodrich, printed testimony, pages 102, 103, as follows, viz:

"Ques. In paper marked continuation of Exhibit E, filed April 13, 1865, is an item, use of rolling stock $36,118 86. Does this item contain any charge for use of rolling stock subsequent to Sept. 1, 1864?

"Ans. It does not as I understand it.

"Ques. When I understand that Exhibit E, and continuation of Exhibit E, show the amount charged the eastern division for the use of rolling stock from June 13, 1863, to Sept. 1, 1864, is this correct?

"Ans. That is as I understand it.

"Ques. Since Sept. 1, 1864, where has the rolling stock been used which was on the old road when the receiver was appointed?

"Ans. It has been used on the road between Milwaukee and La Crosse by the way of Watertown, Columbus, and Portage City, being the western division and the Watertown road;" consequently the said sum allowed by the auditor does not contain any allowance for the use of rolling stock belonging to the eastern division used by the St. Paul Company upon its road from La Crosse to Milwaukee, by the way of Watertown, from September 1, 1864, to February 28, 1865; whereas the said auditor should have allowed and reported for the use of the rolling stock belonging to said eastern division, used upon said western division from September 1, 1864, to February 28, 1865, the sum of $128,149 26 dollars, as shown by the testimony of E. H. Goodrich, printed page 106, and Exhibit Z Z Z, attached to said testimony. This exception is filed by special leave of the court, as specification or more particular statement of exception eleven, heretofore filed by the Milwaukee and Minnesota Railroad Company.

(S'g'd) MATT. H. CARPENTER,
*Sol. for Mil. & Min. R. R. Co., Def't.*

107 *Exhibit No.* 4

Report of the auditor on the twelfth exception of the Milwaukee and Minnesota Railroad Company.—Filed July 14th, 1865.

Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others. } In equity.

To the hon. the circuit court of the United States for the district of Wisconsin:

In pursuance of an order of reference made in this cause on the eleventh day of July, A. D. 1865, and hereto annexed, I, Henry L. Palmer, auditor named therein, do certify and report that I have examined the 12th special exception filed in behalf of the Mil-
108 waukee and Minnesota Railroad Company to the report heretofore made by me in this cause, and the subject-matter therein referred to, and have reviewed the portion of my former report in said exception mentioned and the evidence taken before me on which the same was founded. That Exhibit E, annexed to the testimony heretofore returned, purports on its face to be an account of the earnings and expenditures of the eastern division of the La Crosse and Milwaukee railroad from June 13th, 1863, to June 30th, 1864, inclusive, and "Exhibit E continued" purports to be a similar account covering the time from the 1st September, 1864, to the 28th day of February, 1865. These accounts both contain credits to the eastern division for the use of rolling stock belonging to it, by the Milwaukee and St. Paul Railway Company. These credits formed a material element in the computation made by me to ascertain the amount of property chargeable to the Milwaukee and St. Paul Company for the use of the rolling stock of the eastern division, and the amount chargeable to the Milwaukee and St. Paul Company, as ascertained and reported in my former report, to wit, $123,374 40, was based upon the understanding by me that the credit contained in Exhibit E continued, "earnings, from use of rolling stock of eastern division by the Milwaukee and St. Paul Railway Company, for the entire time from June 30th, 1864, to February 28th, 1865." On examination of the monthly reports of the earnings and disbursements of the eastern division for the months of September, October, November, and December, 1864, and the months of January and February, 1865, on file in the office of the clerk of this court in this cause, shows that Exhibit E continued, contains no charge or credit for the use of rolling stock for any period of time subsequent to the 31st day of August, 1864, and I therefore report that the said sum heretofore reported by me, that is to say, $123,374 40, as chargeable to the account of the Milwaukee and St. Paul Railway Company for the use of the rolling stock of the eastern division of the La Crosse and Milwaukee railroad is chargeable to the said company for the use

of such stock from the 13th day of June, 1863, to the 31st day of August, 1864, and that the account against the Milwaukee and St. Paul Railway Company, as stated in "schedule second," annexed to my former report, does not contain any charge against the said company for the use of the rolling stock belonging to the eastern division from the 1st September, 1864, to and including the 28th day of February, 1865.

I further report that I am unable from the evidence before
109 me on the former reference to ascertain accurately what sum should be charged the Milwaukee and St. Paul Railway Company for the use of rolling stock belonging to the eastern division from September 1st, 1864, to February 28th, 1865, for the reason that the testimony does not show what amount of the rolling stock in value, or what particular stock in kind of that belonging to the eastern division, was used on the roads of the St. Paul company after September 1st, 1864. I can only arrive at an approximate result. The cost of the entire mileage or the value of the use of all the rolling stock on the roads of the Milwaukee and St. Paul Railway Company from September 1st, 1864, to February 28th, 1865, I ascertain by multiplying the mileage of each class of rolling stock as shown in Exhibit Z Z Z, by the value or cost of the mileage of that class as given in the testimony of E. H. Goodrich, esq., page 104 of printed testimony, and thus ascertain and report that the whole cost of the mileage on the roads of the St. Paul company, or the value of the use of all the rolling stock used thereon for the period of time mentioned, was as follows:

| | |
|---|---|
| Locomotives 434,577, at 25 c | $108,644 25 |
| Passenger cars, 465,933, at 5 c | 23,296 65 |
| Baggage, mail, and express cars, 230,172, at 3 c | 6,905 16 |
| Freight cars, 1,514,469, at 2 c | 30,289 38 |
| Total | 169,139 44 |

All of the rolling stock on the road when the receiver took possession of it, June 11th, 1860, was used on the road of the Milwaukee and St. Paul Railway Company after September 1st, 1864, as appears by the testimony. How much of that purchased and built by the receiver, amounting in value to $147,958 99, was so used, and how much of it was used on the eastern division after that date, I am unable to determine from the testimony. I assume that all the rolling stock on the road on the 1st September, 1864, except that portion of the stock purchased and built by the receiver, which in the decree in the land grant case was adjudged to belong to the eastern division, amounting in value to $121,178 00, was used after that date on the roads of the Milwaukee and St. Paul company, and that the last mentioned share of the stock remained after September, 1864, on the eastern division. I assume that the stock purchased and built by the Milwaukee and St. Paul Railway Company, and in

use on its roads from September, 1864, to February 28th, 1865, was of the same value of similar stock theretofore on the road.

110 The whole value of the rolling stock exclusive of that purchased and built by the Milwaukee and St. Paul Railway Company was..... $659,295 88
Of this it is assumed that there remained in use on the eastern division after September 1st, 1864, its share of the stock acquired by the receiver..... 121,178 00

Balance..... 583,117 88

To this balance which was thereafter used by the Milwaukee and St. Paul Railway Company in its roads..... 538,117 88
Add the amount of the stock purchased and built by the Milwaukee and St. Paul Railway Company, amounting at the same valuation as the other stock shown by Exhibit No. 7 to..... 412,378 14

And this amount..... 950,496 02
is the aggregate value of rolling stock in use on the roads of the Milwaukee and St. Paul Railway Company from September 1st, 1864, to February 28th, 1865, of this amount of stock..... 687,096 88
Less the amount of stock purchased by the receiver and supposed to have been retained and used on the eastern division, viz..... 121,178 00

That is to say..... 485,918 88

belonged to the eastern division, and such proportion of the entire cost of mileage of the rolling stock on the roads of the Milwaukee and St. Paul Company from September 1st, 1864, to February 28th, 1865, as this amount leaves to the whole amount of rolling stock in use on the roads of the Milwaukee and St. Paul Railway Company during the period of time mentioned, should be charged to the Milwaukee and St. Paul Railway Company for the use of rolling stock belonging to the eastern division, in addition to the sum charged to said company in the account as stated in schedule second, annexed to my former report.

And I have ascertained and report that the amount which should be so charged to the Milwaukee and St. Paul Railway Company for the use of rolling stock belonging to the eastern division from
111 September 1st, 1864, to Feb. 28th, 1865, is eighty-six thousand and four hundred and sixty-six dollars and fifty-four cents, ($86,466 54,) and this sum should be added to the balance of the account against said company as shown by schedule second annexed to my former report.

And I further report that if it shall be ascertained that 52½ per cent. of the stock acquired by the receiver and the stock on the road when the receiver took possession was taken by the Milwaukee and

St. Paul Railway Company and used upon its roads after September 1st, 1864, leaving only 47½ per cent. of the stock acquired by the receiver on the eastern division, or if it shall be deemed more equitable to assume that such was the fact, than to adopt the theory upon which I have ascertained the amount chargeable to the Milwaukee and St. Paul Company as above stated, the following results will be attained: Whole value of use of rolling stock on the roads of the Milwaukee and St. Paul Railway Company from 1st of September, 1864, to 28th February, 1865, as above stated, $169,139 44; whole value of rolling stock in use on the roads of the Milwaukee and St. Paul Railway Company from September 1st, 1864, to Feb. 28th, 1865, $1,001,380 67.

Amount of the same belonging to the eastern division, $536,803 53.

Amount chargeable to the Milwaukee and St. Paul Railway Company for the use of rolling stock belonging to the eastern division from the 1st of September, 1864, to the 28th February, 1865, both inclusive, upon this basis, ninety thousand six hundred and sixty-seven dollars and thirty-one cents, ($90,667 31.)

July 13, 1865.

H. L PALMER.

112 *Exhibit No. 5.*

Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor &c.,
*vs.*
LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

The exceptions of the Milwaukee and St. Paul Railway Company to the report of Henry L. Palmer, auditor, to the 12th special exception filed on behalf of the Milwaukee and Minnesota Railroad Company to the former report of said auditor, filed July 14th, 1865:

First. The Milwaukee and St. Paul Railway Company excepts to so much of said report as charged said company for the use of rolling stock belonging to the eastern division of the Milwaukee and St. Paul railway from September first, 1864, to February 28th, 1865, the sum of $86,466 50; whereas said auditor should have reported that no part of the rolling stock belonging to the eastern division was used on the road of the Milwaukee and St. Paul Railway Company from and after the first day of September, 1864.

Second. The Milwaukee and St. Paul Railway Company excepts to so much of said report as finds, upon a certain hypothesis which is not found to exist, said company should be charged for the use of rolling stock used on its road belonging to the eastern division, from the 1st day of September, 1864, to the last day of February, 1865, both inclusive, the sum of $90,667 31, whereas said auditor should have found and reported that no part of the rolling stock belonging to said eastern division was used on the road of the Milwaukee and St. Paul Railway Company between the dates specified.

Third. The Milwaukee and St. Paul Railway Company except to the report of said auditor for the reason that it is in the alternative hypothetical, and indefinite.

(Sgd.) JOHN W. CARY,
*Solicitor for M. & St. P. R. W. Co.*

113 *Exhibit No. 7.*

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company, the Milwaukee and Minnesota Railroad Company, and others.

This day this cause came on to be heard upon the bill taken as confessed against the defendants, the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, Edward H. Broadhead, Joshua Hathaway, D. C. Freeman, E. Bradford Greenleaf, Thomas Turton, John Sercomb, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Edwin Townsend, Charles Quentin, John H. Tesch, Byron Kilborn, the Juneau Bank, Cicero Comstock, George W. Chapman, and Moses M. Davis, for their having failed to plead, answer, or demur, thereto, and upon the bill and answers of the defendants, Selah Chamberlain, Sebre Howard, Lawrence G. Graham, Donald D. Scott, A. Fleming, and John S. Rockwell, in the name of the Milwaukee and Minnesota Railroad Company, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, Edwin C. Litchfield and Ephraim Mariner, and the replications thereto, and the pleadings and proofs, and upon the report of the masters herein filed, and on reading the mandate from the Supreme Court of the United States, and on reading the report of Jerome R. Brigham, special master, showing the amount of interest due to the complainant on the first day of March, A. D. 1864, to be the sum of four hundred thousand dollars, less the sum of thirty-four thousand seven hundred and ninety-five one-hundredths dollars, received by complainants, and that the said instalments of interest are for forty thousand dollars each, and that the same are due and payable on the first days of March and September in each year; and on motion of Thomas L. Ogden, solicitor for complainant, it is ordered, and adjudged, and decreed that the sum of four hundred and five thousand two hundred and ninety, five one-dundredths dollars ($405,290 05) interest was due and unpaid upon the bonds described in the bill of complaint in this action on the 1st day of September, A. D. 1864, and that the same now remains due and unpaid.

114 And it is further ordered, adjudged, and decreed that unless the said sum of four hundred and forty thousand dollars be fully paid at or before the expiration of one year from the date of this decree, that the usual order will be made for the sale of the mortgaged premises described and set forth in the bill of complaint and in the mortgage.

And it is further ordered and adjudged that after the expiration

of the said year the complainant shall be at liberty, when further instalments of interest shall be due and remain unpaid, to apply for an order for the sale of said mortgaged premises, as directed by and in accordance with the mandate of the Supreme Court.

And it is further ordered, adjudged, and decreed that all moneys in the hands of the receiver, or other persons, applicable to the payment of the interest specified in this decree, be paid on this decree, so far as necessary to satisfy the amount now due, or which may be due at the time of such payment.

And it is further ordered, adjudged, and decreed that any of the parties to this suit, whose rights are not herein and hereby expressly determined and adjudged upon, shall be at liberty to apply to the court at the foot of this decree for such other or further relief as they may be entitled to, and consistent with the rules and practice of this court, and as may be agreeable to equity.

SAM'L F. MILLER.
A. G. MILLER.

115 *Exhibits Nos.* 8 *and* 9.

Orders of the United States circuit court for the district of Wisconsin, executing the mandate of the Supreme Court of the United States, directing that the rolling stock of the late La Crosse and Milwaukee railroad, and the eastern division of said road, be delivered to the Milwaukee and Minnesota Railroad Company.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this eighteenth day of July, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the ninetieth.

[SEAL.] A. SCOTT SLOAN, *Clerk.*

[Stamp.]

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, begun and
116 held according to law, on the second Monday of April, A. D. 1865, at the city of Milwaukee, in said district of Wisconsin; present and presiding Hon. Samuel F. Miller, associate justice of the Supreme Court of the United States, assigned to said circuit, and the Hon. Andrew G. Miller, district judge. On the twentieth day of the

term, to wit, on the eighteenth day of July, A. D. 1865, the following proceedings were had, to wit:

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

On motion of Matt. H. Carpenter, solicitor of the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, and on the mandate of the Supreme Court of the United States in this cause, ordered that the whole amount due the complainants in this cause, and to become due before the day of sale of the mortgaged premises, are estimated as now appears to be as follows, viz:

Amount fixed by order or decree nisi, $405,290 05, together with interest thereon since September 27, 1864. Coupons due March 1, 1865, $40,000, with interest thereon since that date. Coupons to become due September 1, 1865, $40,000, with interest thereon from that date. Expenses, counsel fee, etc., allowed at $35,796 33, with interest thereon from this day.

Ordered further, that in case said Milwaukee and Minnesota Railroad Company shall, before a sale of the mortgaged premises in this cause, pay to the clerk of this court for the complainant in this cause the several sums above mentioned, with interest thereon as aforesaid, to the day of such payment and the costs in this cause to be taxed, that upon such payment the said receiver, Hans Crocker, and the said Milwaukee and St. Paul Railway Company, its officers, directors, agents, and emplyees, deliver over to said Milwaukee and Minnesota Railroad Company the eastern division, so called, of the La Crosse and Milwaukee railroad, so called, from Milwaukee to Portage, together with all the rolling stock that was on the whole of the La Crosse and Milwaukee railroad or belonged or appertained thereto when the said receiver was appointed, except forty box cars numbered as follows, viz: 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, and also deliver to said Milwaukee and Minnesota Railroad Company such proportion of the rolling stock that was purchased by the receiver as 121,178 dollars bears to 26,199 dollars, together
117 with all the rights, privileges, and franchises, and personal and other property belonging or in any wise appertaining to said railroad from Milwaukee to Portage, and that the said receiver be thereafter dismissed and discharged except for the purpose of passing his accounts.

Ordered further, that before the Milwaukee & Minnesota Railroad Company shall be allowed and permitted to enter into possession as aforesaid, it shall make, execute, and file with the clerk of this court, a bond to the United States in the penal sum of twenty-five thousand dollars with sufficient surety to pay to Sebre Howard and Selah Chamberlain, or the owners of said judgments or either of them, all such sums as may come into the hands of said company, which shall

hereafter be found to be rightly applicable to the payment of their claims, if they shall be established as liens upon said road. And that said company execute its bond to Hans Crocker in the sum of twenty thousand dollars, with sufficient surety to indemnify him for contingent liability mentioned in the report of the auditor in this cause. Ordered further, that said Howard or Chamberlain may at any time hereafter apply to the court for an additional bond if the circumstances of the case shall require it, both of said bonds hereinbefore mentioned to be approved by the clerk of this court. Ordered further, that if the said Milwaukee & St. Paul Railway Company shall pay over the sum in its hands or any part thereof, as this day ordered, the said Milwaukee & Minnesota Railroad Company shall only required to pay to the clerk of this court the balance of the amount so due said complainant at the date of payment by said last named company, over such sum so paid by said Milwaukee & St. Paul Railway Company, and said Milwaukee & Minnesota Railroad Company shall be entitled to possession as hereinbefore mentioned upon payment of such balance, and giving bonds as hereinbefore ordered.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this nineteenth day of July, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the ninetieth.

[SEAL.] A. SCOTT SLOAN, *Clerk.*

[Stamp]

At a stated term of the circuit court of the United States of America, for the ninth circuit and district of Wisconsin, begun and held according to law, on the second Monday of April, A. D. 1865, at the city of Milwaukee, in said district of Wisconsin; present
118 and presiding the Hon. Samuel F. Miller, associate justice of the Supreme Court of the United States, the Hon. Andrew G. Miller, district judge. On the twentieth day of the term, to wit, on the eighteenth day of July, A. D. 1865, the following proceedings were had, to wit:

JAMES T. SOUTTER, survivor, &c., *vs.* THE LA CROSSE & MILWAUKEE RAILroad Company *et al.* } In equity.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

This day this cause came on to be heard upon the exceptions filed on behalf of the Milwaukee & St. Paul Railway Company to the report of H. L. Palmer, auditor, made on the references to him by or-

der of the 28th April, 1864, and October 8th, 1864, concerning the accounts of the receiver and the Milwaukee & St. Paul Railway Company. And also on the exceptions of the Milwaukee & Minnesota Railroad Company, and Hans Crocker, receiver, to said report. And the court having heard the argument of John W. Cary, counsel for the Milwaukee & St. Paul Railway Company, and M. H. Carpenter, counsel for the Milwaukee & Minnesota Railroad Company, and James S. Brown, counsel for Hans Crocker, receiver, it is ordered that the first, second, and third exceptions of the Milwaukee & St. Paul Railway Company be overruled, and that the fourth and fifth exceptions of said company be sustained. And as to the said fourth and fifth exceptions the court finds that the auditor's report be so modified as to charge the said company with only the proportion of supplies on hand, except wood, which the eastern division bears to the western division in length of road, namely 95 miles to 105 miles. And the exceptions of said company to the supplemental report of said auditor, filed 14th July, 1865, are also overruled. The exceptions of Hans Crocker to said auditor's report are overruled. And as to the exceptions of the Milwaukee & Minnesota Railroad Company to said auditor's report in chief, the first, second, third, fourth, fifth, sixth, seventh, ninth, and tenth (1, 2, 3, 4, 5, 6, 7, 9, and 10) of said exceptions are overruled. That the sixth exception of the Milwaukee & Minnesota Railroad Company be overruled without prejudice to the right of that company to proceed against the said Hans Crocker, receiver, for contempt of court for misfeasance or malfesance as receiver, and without prejudice to any proceeding against said receiver for damages for misfeasance or malfeasance as receiver, and the eighth (8) of said exceptions is sustained.

119 The 11th of said exceptions having been amended by filing a twelfth exception, which was referred to said auditor, and on which he made a supplementary report, is overruled and the same confirmed as to the charge of $86,466 54, dollars.

It further appearing that the said Milwaukee & St. Paul Railway Company had since the *the* 28th day of February, 1865, paid to the receiver the sum of 48,000 dollars on account of the matters so audited up to that date, said sum is hereby allowed as a credit on the sum found by the auditor to be in their hands, payable to the receiver. And the court correcting the auditor's report in the particulars above mentioned finds that there is now in the hands of the Milwaukee & St. Paul Railway Company, as money due and payable to Hans Crocker as receiver of the eastern division of the La Crosse & Milwaukee railroad, the sum of (364,188 58-100 dollars) three hundred and sixty-four thousand one hundred and eighty-eight and 58-100 dollars.

And it appearing to the court that the cash balance due to said receiver is the sum of $12,681 69, and that there is due to the complainant for the expenses of this suit the sum of $35,796 34, together the sum of $48,478 03.

Now upon consideration this court doth order that the Milwaukee & St. Paul Railway Company, on or before the 1st day of September, 1865, do pay in cash to said receiver the sum of $12,681 69, and

in cash to said receiver for said James T. Soutter, trustee, by the same day the sum of $35,796 34. And that upon making said payment of $48,478 03, the same be credited upon said indebtedness of $364,188 58.

And it is further ordered that the said Milwaukee & St. Paul Railway Company on or before the first day of September, 1865, pay to Hans Crocker, receiver, the further sum of three hundred and fifteen thousand seven hundred and ten dollars and fifty-three cents; and that in making said last payment, if made by the 1st of September, 1865, said Milwaukee & St. Paul Railway Company may pay to the receiver in past due coupons for interest on the bonds secured by the mortgage in this cause in such amount as the holders of such coupons would be entitled to on their said coupons if the whole amount thereof was paid in cash.

120 *Exhibit No.* 10.

Circuit court of the United States, district of Wisconsin.

At a regular term of the circuit court of the United States for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in the said district of Wisconsin, on the second Monday of September, 1865.

Present, Hon. S. F. Miller, circuit judge, and Hon. A. G. Miller, district judge, on the twenty-eighth day of September, A. D. 1865.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Williams, Edward H. Broadhead, Newcomb Cleveland, William Grimmel, Joshua Hathaway, James Wolstenholme, Edwin Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simmons, De Witt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Kuetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, G. Howard Mitchell, Edwin Townsend, the Mercantile Bank of Hartford, Conn., August Lauthorf, Charles Quentrio, John H. Tesch, Byron Kilbourn, Nathaniel S. Burton, the Juneau Bank, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, Cicero Comstock, George W. Chapman, Moses M. Davis, Charles Howard, and Henry Valette.

On reading and filing the petition of the complainant, dated Sep-

tember 28th, 1865, in this suit, and on reading the decree made by this court on the 27th day of September, A. D. 1864, and it appearing to the court that the principal sum secured by the bonds and mortgage set forth in the complaint is one million dollars; that the amount found due for interest by the said decree remains un-
121 paid, except the sum of sixty-two thousand four hundred and forty dollars paid by the receiver, leaving due at this date, with interest, the sum of three hundred and seventy-two thousand one hundred and one 87-100 dollars, and that two instalments of interest have become due and payable since the said decree, amounting with interest to the sum of eighty-one thousand eight hundred and thirty-five 52-100 dollars; and on motion of Thomas L. Ogden, soliciter for the complainant, it is ordered, adjudged, and decreed, and this court doth hereby order and decree, that all and singular the mortgaged premises mentioned in the bill of complaint in this cause and hereinafter described, or so much thereof as may be sufficient to raise the amount owing to the complainant for the several bondholders for principal, interest, and costs in this cause be sold at public auction, under the direction of the marshal of this district; and it is further ordered that the said sale be made at the post office in the city of Milwaukee, within this district, where the said premises are situated, and that said marshal give public notice of the time and place of such sale by advertisement, published in some newspaper printed in said city, and in two newspapers printed in the city of New York, at least once in each week for twelve successive weeks previous to the day of sale, and that said complainant, or any of the parties to this cause, may become the purchaser thereof, and that said marshal execute a deed or deeds to the said purchaser or purchasers of said mortgaged premises, and that the said marshal pay to the complainant or his solicitor, out of the proceeds of such sale, their costs in this cause to be taxed, and which have not already been paid.

And it is further ordered, adjudged, and decreed that the defendants and all persons claiming or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part and parcel thereof, when said sale shall be confirmed.

And it is further ordered, adjudged, and decreed that the purchaser or purchasers of said mortgaged premises at such sale be let into the possession thereof, and that any of the parties to cause who may be in possession of the premises or any part thereof, and any person who, since the commencement of this suit, has come
122 into possession under them, or either of them, deliver possession thereof to such purchaser or purchasers on production of the deed of said premises, and a certified copy of the order confirming the report of sale.

And it is further ordered, adjudged, and decreed that the purchaser or purchasers at such sale may pay therefor in the bonds and coupons of the La Crosse and Milwaukee Railroad Company, included in this decree, in proportion as the amount bid bears to the whole sum

secured by the mortgage, after payment of costs and expenses of sale, and that the marshal report to the court the bonds secured by the said mortgage, and the coupons of such bonds by their amounts and numbers respectively not presented or paid to him in or toward the purchase of the mortgaged premises, and also the share and amount of the purchase-money of the mortgaged premises applicable to the payment of the bonds and coupons last mentioned.

And it is further ordered and decreed that in case of a sale of the mortgaged premises under this decree, the proceeds shall be applied to the balance of the interest due, and if such proceeds shall exceed such balance, the same shall be applied to the further accruing interest down to the date of such sale, and if the proceeds exceed such balance the same shall be applied to the principal of the bonds, in case the bondholders assent, or pro rata to those who may assent, and any remaining balance of the said proceeds be invested under the direction of the court for the payment of future accruing interest, and ultimately the principal.

And it is further ordered and decreed that the receiver now in possession of the mortgaged premises, upon sale and confirmation thereof, be discharged, except as to passing his accounts.

The description of the property authorized to be sold under and by virtue of this order is as follows, viz:

All and singular the railroad of said company, commencing in the city of Milwaukee and running thence to Portage City, a distance of ninety-five miles, which road has been constructed and is now in full operation; and also the railroad of said company, (as well that part which has been constructed as that part which remains to be constructed,) from Watertown by way of Columbus to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one-half of which last-mentioned road being the part between Watertown and Columbus, was constructed at the time of the execution of the said mortgage, and was then in full operation, including all and singular the several tracks, pieces, or parcels of land which then did or might thereafter constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all other land and real estate which then constituted or might thereafter constitute or be a part of or appertain to said railroads, or either of them; and also all and singular the superstructure of said railroads, whether then made or made thereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appurtenant to said railroads, or either of them, whether then made or built, or thereafter built or made; and also all and singular the locomotive engines, cars, and rolling stock, and all the materials, tools, implements, and utensils, and other personal property which had been procured for or used in connection with said roads, or either of them, prior to the appointment of Hans Crocker as receiver of said road, except forty box cars, numbered respectively, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396,

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398, 400, 402, 406, 408; and including as part of said mortgaged premises such proportion of the rolling stock bought by the receiver since his appointment as the net earnings of the eastern division of said railroad bear to the earnings of the western division, as ascertained by the report of H. L. Palmer, and as confirmed by the court; and also all and singular the rights, liberties, and franchises of said railroad company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown, by way of Columbus, to Midland aforesaid, and all the property, real and personal, and all the rights, liberties, privileges, and franchises of said railroad company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown, by way of Columbus, to Midland.

It is further ordered that the marshal sell all the other property mentioned in this decree first and before the he sells the railroad from Watertown, by way of Columbus, to Midland, and that this
124 shall not be sold if that which is first sold shall bring a sufficient sum to satisfy the debt, interest, and costs mentioned in this decree.

It is further ordered and decreed that this decree shall not prejudice the rights of the Milwaukee and Minnesota Railroad Company under the order of the court in this cause, made on the 18th day of July, A. D. 1865, providing for the entry of said company into possession of the said mortgaged premises on certain terms and conditions fixed by the said order, and the said Milwaukee and Minnesota Railroad Company shall be at liberty to avail itself of the provisions of the said order, nothwithstanding this decree, at any time before the sale of said mortgaged premises in this cause.

SAM. F. MILLER.
A. G. MILLER.

JANUARY 19, 1866.

This day came the Milwaukee and Minnesota Railroad Company by its solicitor, and filed its replication to the answer of the Milwaukee and St. Paul Railway Company, and also to the answer of James T. Soutter and Shepherd Knapp, as follows, to wit:

*Suit by supplemental bill.*

In circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE AND MINNESOTA RAILROAD Company
*vs.*
JAMES T. SOUTTER and OTHERS.

The replication of the Milwaukee and Minnesota Railroad Company to the answer of the Milwaukee and St. Paul Railway Company, one of the defendants to the said supplemental bill:

This repliant, saving and reserving unto itself all, and all manner of advantage of exception to the manifold insufficiencies of the

said answer, for replication thereunto saith, that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant
125 is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

MATT. H. CARPENTER,
*Sol. for Mil. and Minn. R.R. Co., Compl't.*

*Suit by supplemental bill.*

In circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE AND MINNESOTA RAILROAD Company
*vs.*
JAMES T. SOUTTER and OTHERS.

The replication of the Milwaukee and Minnesota Railroad Company to the answer of James T. Soutter and Shepherd Knapp, survivors, &c., defendants to the said supplemental bill:

This repliant, saving and reserving unto itself all, and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

MATT. H. CARPENTER,
*Sol. for Mil. and Minn. R.R. Co.*

126 FEBRUARY 1, 1866.

This day came James T. Soutter and Shepherd Knapp, by their solicitor, and filed their replication to the answer of the Milwaukee and Minnesota Railroad Company, as follows, to wit:

Circuit court of the United States for the 9th circuit and district of Winconsin, in equity.

The replication of James T. Soutter and Shepherd Knapp, survivors, &c., complainants, to the answer of the Milwaukee and Minnesota Railroad Company, defendant:

These repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say, that they will aver, maintain, and prove their bill of complaint to be true, certain, and insufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, transferred or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

JOHN W. CAREY,
*Complainants' Solicitor.*

MARCH 14, 1866.

This day came the parties and filed their stipulation as to certain testimony, and also that this cause be placed upon the calendar for hearing at the April term, (see page 492.)

APRIL 2, 1866.

This cause and cross bill set down for hearing by complainants in cross bill.

127 APRIL 9, 1866.

This day came the Milwaukee and Minnesota Railroad Company by its solicitor, and filed amendments to supplemental bill, and also filed a second supplemental bill, as follows, to wit:

*Suit by supplemental bill.*

Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE AND MINNESOTA RAILROAD Company
*vs.*
JAMES T. SOUTTER and OTHERS, def'ts.

Amend the supplemental bill in the prayer for relief, by inserting next before the prayer for general relief in said supplemental bill, as follows, viz:

And that it may be ordered, adjudged, and decreed that the said Milwaukee and St. Paul Railway Company has not, under and by virtue of said purchase by said Pratt and White at said western division

foreclosure sale, and the subsequent conveyance by said Pratt and White to said company, acquired any right to use or operate the said western division of said railroad, together with its rolling stock and franchises, independent of, and in competition with said eastern division of said road, or otherwise, than as a part of a through route from La Crosse to Milwaukee, over the said eastern and western divisions of said road, as the same was originally chartered and constructed, and that the said Milwaukee and St. Paul Railway Company, its officers, directors, agents, and employees be perpetually restrained and enjoined from using or managing said western division, the rolling stock or franchises pertaining thereto, in any other manner than as a part of a continuous line of road as aforesaid; and that it may be decreed by said court that your orator has the right to run trains of cars between La Crosse and Milwaukee for the transportation of passengers and freight over said eastern and said western division, rendering and paying to said Milwaukee and St. Paul Railway Company reasonable toll or compensation for such use of its said western division, or that in case this court shall be of opinion that your orator is not entitled to the relief last above prayed, that then and in that case it may be decreed that said eastern division and said western division shall be and remain an entire and through road for the transportation of passengers and freight by the said Milwaukee and St. Paul Railway Company and your orator, and that the profits of all through business shall be divided between the owners of said divisions respectively, as follows: 95-200 to your orator, and 105-200 to said Milwaukee and St. Paul Railway Company, and the earnings of each division of local business may belong to the respective owners of said divisions, and that each may be allowed a reasonable rent or compensation for the rolling stock owned by it in severalty, or that such other or different basis of division of said profits may be decreed as to the court shall seem just, and as shall be agreeable to equity and good conscience, and that leave may be reserved in said decree for your orator, in case your orator and the said Milwaukee and St. Paul Railway Company cannot agree among themselves as to the management of said divisions as an entire road, to apply to said court for the appointment of a manager to superintend such management of said divisions as an entire road. And that your orator may have such other and further relief as the nature of its case may require, and as shall be agreeable to equity and good conscience.

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MATT. H. CARPENTER,
*Sol. and of Counsel for the Milwaukee and Minnesota Railroad Company.*

*2d supplemental bill.*

To the judges of the circuit court of the United States for the district of Wisconsin, in equity:

The Milwaukee and Minnesota Railroad Company, one of the defendants to the bill of complaint of Green C. Bronson, James T. Soutter, and Sheherd Knapp, complainants, against the La Crosse

and Milwaukee Railroad Company and others, exhibited in the district court of the United States for the district of Wisconsin, on the 5th day of December, A. D. 1859, the said Milwaukee and Minnesota Railroad Company being a corporation under the laws of the
129 State of Wisconsin, brings this its second supplemental bill, according to stipulation on file, against the said James T. Soutter and Shepherd Knapp, survivors of Green C. Bronson, deceased, William Wallace Pratt, William White, and the Milwaukee and St. Paul Railway Company, the said Pratt and White being citizens of the State of Wisconsin, and the said Milwaukee and St. Paul Railway Company being a corporation existing under the laws of the said State; and thereupon your orator complains and says that the said bill of complaint of the said Bronson, said Soutter, and said Knapp, complainants, against the La Crosse and Milwaukee Railroad Company, your orator and others, to which this is a second supplemental bill, was exhibited and filed by the said Bronson, Soutter & Knapp in the district court of the United States for the district of Wisconsin, on the 5th day of December, A. D. 1859, and that the same proceeded to final decree of foreclosure and sale, as heretofore stated in the first supplemental bill of your orator thereto, exhibited and filed by your orator in the circuit court of the United States for the district of Wisconsin, on the 10th day of August, A. D. 1864; and your orator begs leave to refer to the records and proofs in the said suit in favor of the said Bronson, Soutter & Knapp against the La Crosse and Milwaukee railroad, your orator, and others, and to the statements contained in the said first supplemental bill of your orator, exhibited and filed thereto, as hereinbefore stated, and prays that the same and the statements, matters, and things therein contained may be considered and taken to be part of this your orator's second supplemental bill, so far as the same are proper to be stated herein.

Your orator further shows, that since the exhibiting of the said first supplemental bill, as hereinbefore stated, the following proceedings in the said suit in favor of James T. Soutter, survivor, &c., against the said La Crosse and Milwaukee Railroad Company, your orator and others, mentioned in said first supplemental bill, have been had as follows, that is to say:

That on the 28th day of April, A. D. 1864, this court made an order therein, directing Hans Crocker, receiver of said court in said cause, to file in said court in said cause a continuous monthly account of his receipts and disbursements as receiver from the time of his appointment, including the receipts and disbursements of the said Milwaukee and St. Paul Railway Company, from the 12th day of June, 1863, and that he shall file the same by the first day of
130 June then next, and that any person interested therein might examine the same, and file exceptions thereto, and that H. L. Palmer, esquire, should be, and he then and there and thereby was, appointed auditor to report to said court upon the same at the then next term of this court.

That afterwards, on the 8th day of October, A. D. 1864, this court

in said cause made an order that the said order of the 28th of April, 1864, should be modified as follows, viz:

"That said Hans Crocker, receiver, should file in the office of the clerk of this court, on or before the 20th day of November then next, a detailed account of his receipts and disbursements as receiver from the 1st day of October, 1864, inclusive; that any parties to said cause might, within ten days after such account should be filed, file exceptions thereto; that such account and the exceptions thereto should be, and thereby were, referred to the said auditor appointed by said order of April 28, 1864, to examine and report thereon in like manner as upon the accounts and exceptions referred by said former order, and that said auditor should ascertain and report what ought to be charged for the use of the rolling stock formerly used on said railroad, as part of the accounts reported by him, and that said auditor should ascertain and report what sums should be allowed to the receiver for his services and expenses as receiver, and whether the receiver was subject to any and what contingent liabilities accruing out of his receivership, and the amount and nature thereof; and that the said auditor should report thereon with all convenient speed, and by the first Monday of March, A. D. 1865; and that the said receiver should also file with the clerk of said court, on or before the 20th day of March, A. D. 1865, an account of his receipts and disbursements as receiver from the 1st day of October, 1864, to the first day of February, 1865, both inclusive; that any of the parties to said cause might, within five days after such account should be filed, file exceptions thereto; and that said last mentioned account and the exceptions thereto should be, and they thereby were, referred to said Palmer, as auditor as aforesaid, to examine and report thereon by the 1st day of the then next term of this court; that under and in pursuance of said order and modification the said Palmer heard all the parties in interest, and particularly the Milwaukee and St. Paul Railway Company, and their proofs and allegations; and afterwards, on or about the 28th day of June, 1865, made and filed in said court his report to said court in said cause, in writing, which remains of record therein, and a copy of which is hereto attached, and
131 marked Exhibit No. 1; and that afterwards both your orator and the Milwaukee and St. Paul Railway Company appeared in said court in said cause, and submitted themselves to the jurisdiction of said court therein, and filed their respective exceptions to said report of said auditor; that a copy of the exceptions filed by the Milwaukee and St. Paul Railway Company is hereto attached, and marked Exhibit No. 2.

And that afterwards, on or about the 11th day of July, A. D. 1865, your orator filed further exceptions to the said auditor's report, a copy of which is hereto attached, and marked Exhibit No. 3. And thereupon the said court made an order in said cause that the said Palmer, auditor as aforesaid, should make a written report to said court in regard to the matters embraced in said additional or 12th exception, filed by your orator to said report, and state in his report whether any allowance had been made in and by said report for the

use of rolling stock belonging to the said eastern division, used on the western division, or on other roads operated by the Milwaukee and St. Paul Railway Company from the 1st day of September, 1864, to the 28th day of February, 1865, and if not, to report what sums should be allowed therefor; and ordered that said twelfth exception be referred and transmitted to said auditor, to be returned by him to said court, with his additional report thereon.

And that afterwards, on the 14th day of July, 1865, the said auditor made a report on said 12th exception, a copy of which is hereto attached, and marked Exhibit No. 4.

And that afterwards, on the 17th day of July, A. D. 1865, the said Milwaukee and St. Paul Railway Company, in said court, in said cause, filed its exceptions to said last report of said auditor, a copy of which exceptions is hereto attached, and marked Exhibit No. 5.

And that afterwards, on the 18th day of July, A. D. 1865, this honorable court, in said cause, made its order on the said several exceptions, a copy of which is hereto attached, and marked Exhibit No. 6.

And your orator further says, that in and by said last mentioned order this court did, and did intend to, adjudicate upon the question of the ownership of the rolling stock as claimed by your orator and by the Milwaukee and St. Paul Railway Company respectively; and did thereby, and did thereby intend to, adjudicate that all the rolling stock which was on the whole La Crosse and Milwaukee railroad when the receiver was appointed, except the forty box cars specially
132 mentioned and described by their numbers in the said decree in the western division foreclosure suit, mentioned in said supplemental bill, belonged to and were owned by your orator; and that of the rolling stock purchased by the receiver and mentioned in said supplemental bill, your orator owned such proportion as $121,178 bears to $26,119; and the said court did in and by said order adjudicate and decree in substance and in fact that your orator was entitled to have and recover against the said Milwaukee and St. Paul Railway Company, for the use of rolling stock owned by your orator upon roads operated by the Milwaukee and St. Paul Railway Company; and that said adjudication, which still remains in full force, is a complete and binding decree of this court upon the rights of the Milwaukee and St. Paul Railway Company, and your orator respectively, in regard to the rolling stock which was on the whole road when the receiver was appointed, as well as that which was purchased by the receiver as stated in said first supplemental bill, and your orator claims the benefit of and will insist upon said adjudication by way of estoppel as conclusive in this cause against the rights pretended and set up by said Milwaukee and St. Paul Railway Company in regard to said rolling stock.

And your orator further shows, that in the said suit in favor of the said Soutter, survivor, to foreclose said mortgage on the said eastern division, mentioned in said supplemental bill, this court, on the 27th day of September, 1864, made its decree therein, a copy of which is hereto attached and marked Exhibit No. 6, and afterwards, on the

18th day of July, 1865, made two orders in said cause, copies of which are hereto attached and marked Exhibits Nos. 7 and 8; and that afterward, on the 28th day of September, A. D. 1865, said court in said cause made a final decree of sale therein, a copy of which is hereto attached and marked Exhibit No. 9.

And your orator further shows that John W. Cary, esquire, was, and acted in said court as counsel for said Soutter in said cause, and that said last-named decree was prepared by, or on advice with, said Cary; and that the said Cary was there and then, and ever since has been, the solicitor and counsel of said Milwaukee and St. Paul Railway Company, and that the said Milwaukee and St. Paul Railway Company, its officers and directors and shareholders, are owners of a large part of the lands secured by said mortgage on said eastern division; and that said Soutter, under said decree last named,
133 by and with the advice and assistance of said Cary, solicitor and counsel aforesaid, proceeded to execute the said last-named decree by sale under the direction of the marshal of said district, and according to said decree, and that the premises and property in said decree described were duly advertised by said marshal to be sold on the 4th day of January, 1866, in pursuance of said decree; and that in the month of December, 1865, your orator paid to the clerk of this court the amount required by said order hereinbefore mentioned to entitle it to the possession of said mortgaged premises and property mentioned and described in, and directed to be sold by the said decree of sale; and that said money so paid into court by your orator has been distributed by order of said court to the bondholders entitled thereto, including the said Milwaukee and St. Paul Railway Company, its officers, directors, and stockholders; and your orator is advised that said decree of sale and subsequent proceedings under the same are, and your orator will insist upon the same as, a complete estoppel against the said Milwaukee and St. Paul Railway Company in regard to the claim which it sets up and pretends in this cause to the said rolling stock which was on the said road when the receiver was appointed, as well as that which was purchased by the said receiver as stated in said first supplemental bill.

And your orator further shows that all the proceedings in said eastern division foreclosure cause, for more than two years prior to the said decree of sale last mentioned, were conducted by and with the advice, consent, concurrence, and assistance of the said John W. Cary, esquire, who was the counsel of the said Bronson, said Soutter, and said Knapp, from the time their bill was first exhibited as stated in the said first supplemental bill, and that the said Cary was, during all the said two years preceding said decree of sale in said eastern divison foreclosure suit, also the counsel and solicitor of the Milwaukee and St. Paul Railway Company; and that from some time in May, 1863, the Milwaukee and St. Paul Railway Company was the owner of nearly all the bonds secured by the said mortgage to Bronson, Soutter, and Knapp, of December, A. D. 1856, and that said last-named company and its officers, directors, and stockholders, particularly Russell Sage, Frederick P. James, and N. A. Cowdry, were

during the said two years next preceding said decree of sale, the owners of a majority of the bonds secured by said mortgage to Bronson and Soutter on the said eastern division, mentioned in said first supplemental bill; and that all the proceedings in said eastern division foreclosure suit during the said two years were had and
134 conducted by and with the full knowledge, consent, and concurrence, aid and efforts of the said Milwaukee and St. Paul Railway Company and its said officers, directors, and stockholders; and that said decree of sale in said eastern division suit, and the proceedings under the same as hereinbefore stated were obtained and directed with the like counsel and concurrence and efforts of said company and said persons last above named, and said John W. Cary, the said Cary all that time acting as the solicitor and counsel for said Soutter and Knapp, and for said Milwaukee and St. Paul Railway Company; and that the said decree of sale in said eastern division suit was so drawn as to direct the sale of the said rolling stock therein described as part and parcel of the said mortgaged premises covered by and included in the said mortgage to the said Bronson and Soutter on said eastern division, by or with the advice of said Cary, acting as solicitor and counsel aforesaid, for the purpose and with the full intent to cause the said rolling stock therein described to be so sold as part of the said eastern division mortgaged premises.

And your orator further shows that long before the said decree of sale in said eastern division suit was prepared and obtained as hereinbefore stated, the said Cary and the said Milwaukee and St. Paul Railway Company, its officers and directors, well know that the Supreme Court of the United States had adjudicated and delivered and promulgated its opinion upon appeal from the said first supplemental bill of your orator, that the said mortgage to the said Bronson, Soutter, and Knapp on said western division did not include or cover any of the rolling stock which was included in and covered by said mortgage to the said Bronson and Soutter on said eastern division mentioned in said first supplemental bill; and long after the said Supreme Court had transmitted to this court its opinion and mandate on said last-mentioned appeal, a copy of which opinion is hereto attached and marked Exhibit No. 10, and said mandate is of record in said cause.

And your orator further shows that it paid to the clerk of said court in said eastern division cause, as hereinbefore stated, over $467,000 dollars on the faith and credit, and relying upon the correctness and binding force of said orders and decree of sale in said eastern division cause, so obtained by the efforts of the said Milwaukee and St. Paul Railway Company, and others as hereinbefore stated; and that said payment by your orator was necessarily
135 made to prevent the sale of the said rolling stock mentioned in said decree of sale as part and parcel of the mortgaged premises covered by said eastern division mortgage, and therefore appurtenant and belonging to said eastern division, and not appurtenant to the said western division, and not covered by or included in the said mortgage to the said Bronson, Soutter, and Knapp; and that

the greater portion of said money so paid in by your orator has been by direction of said court distributed and paid to the Milwaukee and St. Paul Railway Company, its officers, directors, and stockholders above named, and others, with the consent and concurrence and efforts of the said Milwaukee and St. Paul Railway Company, said Sage, James, and Cowdry, and others interested in said last named company, and the said John W. Cary, esquire, who appears of record in said cause as the solicitor of said Soutter and said Knapp, and also as solicitor of said Milwaukee and St. Paul Railway Company, and who was in fact acting in obtaining said decree of sale and directing the proceedings under the same, and in obtaining the order distributing the funds paid by your orator as aforesaid, as counsel for said James T. Soutter; and your orator is advised and insists that by virtue of the said proceedings, the said Soutter and Knapp and the said Milwaukee and St. Paul Railway Company, and said other persons named are precluded and estopped in equity and good conscience to question the correctness of the said decree of sale, under and on the faith and credit of which your orator paid the said large sum of money which has been claimed by and distributed to the said Milwaukee and St. Paul Railway Company, its officers, directors, and agents, as hereinbefore stated.

Your orator further shows that the said Milwaukee and St. Paul Railway Company, on or about the first day of September, A. D. 1864, completed or acquired the control of a railroad from Milwaukee by way of Watertown to Portage, the eastern terminus of the western division and the western terminus of the eastern division; and that since that time said last-named company has used and operated the said rolling stock belonging to your orator upon the said western division and upon the said before mentioned Watertown connection with Millwaukee, so called; and that since the day and year last aforesaid the said Milwaukee and St. Paul Railway Company has used and operated the said western division in connection
136 with the said Watertown connection with Milwaukee as a rival and competing road to the said eastern division; and claims and pretends that under and by virtue of said purchase by said Pratt and White and the organization of said Milwaukee and St. Paul Railway Company and the conveyance by said Pratt and White to said last-named company, mentioned in said first supplemental bill, it has acquired the right to disconnect the said western division in use and in operation from the said eastern division of said railroad, and to use the said western division as a feeder to said Watertown connection with Milwaukee, and to divert all through business between Milwaukee and La Crosse entirely from said eastern division.

And your orator further shows that the said Milwaukee and St. Paul Railway Company intends to, and unless restrained by injunction of this honorable court, will continue to use and operate said western division in the manner last aforesaid, to the great injury of your orator; and your orator further shows that in consequence of the said Milwaukee and St. Paul Railway Company so using said western division since the 1st day of September, 1864, your orator

has been injured more than $1,000,000 dollars; and that such use in the future of said western division by said Milwaukee and St. Paul Railway Company will hereafter injure your orator more than $500,000 dollars each year.

Your orator further shows that the said La Crosse and Milwaukee Railroad Company was incorporated and authorized to build a continuous line of railway from La Crosse to Milwaukee, and was not authorized to operate a line between any other points, and that said company afterwards located and constructed its road between the said termini fixed by said charter over said eastern and said western divisions of said railroad hereinbefore mentioned, and your orator is advised and submits that after the completion of said road by said La Crosse and Milwaukee Railroad Company, the said company could not have used any portion of said road as a separate and distinct road, nor used any portion of said road in connection with any other railroad to the prejudice of the balance of said original road, nor so as to injure those persons having interests in or liens upon other portions of said original road.

That by chapter 121 of the general laws of the State of
137 Wisconsin, passed and enacted A. D. 1856, entitled "An act concerning railroads," and approved October 10, 1856, which act was in force before the said La Crosse and Milwaukee Railroad Company made, executed, or delivered any mortgage to the said Bronson, Soutter, and Knapp, (and ever since has been and now is in force,) mentioned in the said first supplemental bill, it was among other things enacted and provided, that in case of any sale of any railroad or railroads, or any part thereof constructed or in process of construction by any railroad company, on or by virtue of any trust, deed, or of any foreclosure of any mortgage, that thereupon the party or parties acquiring title under any such sale, their associates, successors, and assigns, should have and acquire thereby and should exercise and enjoy thereafter all and the same rights, privileges, grants, franchises, immunities, and advantages in and by said mortgage or trust deed enumerated and conveyed, which belonged to and were enjoyed by the company making such trust deed or mortgage, so far as the same related and appertained to that portion of such road or the line thereof mentioned and described in, and conveyed by, said mortgage or trust deed, and no further, as fully and absolutely in all respects as the corporators, stockholders, officers, and agents of such company making such deed or mortgage might or could have done theretofore, had such sale or purchase not taken place; and that such purchaser or purchasers, their associates, successors, or assigns, might proceed to organize anew and elect directors, distribute and dispose of stock, take the same or another name, and might conduct their business generally under and in the manner provided in the charter of said railroad company, with such variations in manner and form of organization as their altered circumstances and better convenience might seem to require. Provided, however, that no greater or enlarged powers should be exercised by said new organization than were conferred by the charter of said company.

Your orator further shows that the said mortgage to the said Bronson, Soutter, and Knapp, mentioned in said first supplemental bill only described and conveyed such rights, privileges, immunities, and franchises of the said La Crosse and Milwaukee Railroad Company as were appurtenant to said western division, so called, and did not describe or convey the corporate and other general franchises
138 of said La Crosse and Milwaukee Railroad Company; that the said mortgage to the said William Barnes, under which your orator has acquired and holds title as mentioned in said first supplemental bill, did convey and describe all the franchises of said La Crosse and Milwaukee Railroad Company, of whatever name and description, and that the same have become vested in and are now owned by your orator, except so far as the same were described in and conveyed by the said mortgage to the said Bronson, Soutter, and Knapp.

And your orator further shows that after the sale and confirmation of sale by order of said district court in said Bronson, Soutter, and Knapp foreclosure suit, and on the petition of the Milwaukee and St. Paul Railway Company for possession of the property sold under said decree, the said district court made its order therein on the 7th day of May, A. D. 1863, delaring in substance the right which the said Milwaukee and St. Paul Railway Company had acquired, and did, in and by said order, direct and decree that the said western division could only be used as a part of one continuous line of railroad between Milwaukee and La Crosse over the said eastern and said western divisions, and did require said last-named company, and the receiver of said court holding the said eastern division, so to operate the entire road between La Crosse and Milwaukee without interruption, which said order is marked schedule A. attached to said first supplemental bill, and to which your orator here now prays leave to refer, and that the same may be taken to be a part of this your orator's bill.

And your orator further shows, that said order last named remained in full force, and that the said La Crosse and Milwaukee railroad was operated by said receiver, and said Milwaukee and St. Paul Railway Company jointly as a continuous line of road under said charter until afterwards, on or about the 12th day of June, A. D. 1863, when the said district court and this court made orders in causes pending in said courts in which a receiver of said road had been appointed, directing the entire road to be passed to the possession of the Milwaukee and St. Paul Railway Company, and to be by it operated and managed as a continuous line of road between La Crosse and Milwaukee according to the intention of the original charter before mentioned; and the said district court pretended to make an order on the 12th day of June, 1863, in said eastern division foreclosure suit, a copy of which order is Exhibit No. 24, to said first supple-
139 mental bill; and that said Milwaukee and St. Paul Railway Company, before entering into possession of said eastern division of said railroad under said orders, made, executed, and filed in the office of the clerk of said court a bond in the penal sum of

$100,000 dollars, a copy of which is hereto attached and marked Exhibit No. 11; and the said Milwaukee and St. Paul Railway Company, under and by virtue of said last named order, and under and by virtue of a similar order entered by this court in the case of Howard, complainant, against the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, and after giving said bond, entered into possession of said eastern division, and continued to operate the entire line of road between La Crosse and Milwaukee under said orders, until the 1st day of September, A. D. 1864, when said Milwaukee and St. Paul Railway Company, designing and intending to injure and oppress your orator, did, without authority of law, and without right or title, and in violation of the said orders of said court under which it had received possession of said entire railroad, separate and divide the use and management of said road at Portage, and did divert, and ever since has continued to divert, all through business between La Crosse and Milwaukee from said eastern division, and has used and managed said western division only in connection with said road from Portage by way of Watertown to Milwaukee; and that in consequence of such wrongful use of said western division, in violation of said orders and without authority of law, your orator has been injured and has suffered pecuniary loss and damage exceeding one million of dollars.

Your orator further shows that while said road was operated as an entire road by said receiver, the profits arising from all through business over said road were divided between said eastern and said western divisions as follows: 95-200ths to said eastern division, and 105-200ths to said western division; and your orator further shows that had said Milwaukee and St. Paul Railway Company carried out and fully performed the spirit of said orders under which it entered into possession of said entire line of road on the 12th day of June, 1863, your orator would have been entitled to receive and would have received credit for 95-200ths of all profits arising from through business done upon said road, which your orator charges would have amounted, since June 12th, 1863, to the time of exhibiting
140 this second supplemental bill, to over $1,000,000 dollars, and for which the said Milwaukee and St. Paul Railway Company ought to be decreed to account with your orator, and ought to be decreed to pay the same over to your orator as this court shall direct.

You orator further shows that without the aid of this court, and without the statement of an account which a court of equity alone is competent to direct and conduct, your orator has no means of knowing or ascertaining the precise amount of said through business and profits arising therefrom since June 12, 1863, and the exhibiting of this second supplemental bill, or during any portion of such time.

And your orator is advised that it has the right, as the successor of the La Crosse and Milwaukee Railroad Company, and the owner of all its general franchises or franchises in gross, to run trains of cars for the transportation of passengers and freight the entire distance from and between La Crosse and Milwaukee, and over the original line of road as chartered and built, paying the said Milwaukee and

St. Paul Railway Company a reasonable toll for such use of its said western division of said road, or that both of said divisions should be operated together under some arrangement, to be agreed upon between your orator and the said Milwaukee and St. Paul Railway Company, or in case your orator and the said last-named company cannot agree in that behalf, that a manager ought to be appointed by this court to superintend and manage the entire line of said road, and divide the earnings thereof as follows: Of the profits of all through business, 95-200ths to your orator and 105-200ths to the said Milwaukee and St. Paul Railway Company, and that the local earnings upon said road should belong to the owners of the respective divisions, and that either party or owner should be allowed a proper compensation for the use of the rolling stock owned by it in severalty used upon said road in common.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and the relief prayed by said first supplemental bill, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to this your orator's bill, and to the statements, matters, and things contained therein.

141 And that it may be declared and decreed by this court that the said Milwaukee and St. Paul Railway Company has not, in and by virtue of the said purchase from Pratt and White, and the organization of the Milwaukee and St. Paul Railway Company, and the conveyance thereto by said Pratt and White, acquired a right to use said western division independent of, and disconnected from, the use of said eastern division; and that it may be declared and decreed by said court that the said Milwaukee and St. Paul Railway Company has not, by virtue of said decree and subsequent proceedings, acquired any right to use and operate said western division, except in the same manner that the same might by law have been used and operated by the said La Crosse and Milwaukee Railroad Company; that is, as a part of a through line of railway from Milwaukee to La Crosse over the said eastern and said western divisions, as originally chartered and built under said charter.

And that the said Milwaukee and St. Paul Railway Company, its officers, directors, and employees, may be perpetually enjoined by the decree of this court from using, managing, or operating the said western division of said railroad in any other manner than as a part of such continuous line of railway from Milwaukee to La Crosse over said eastern and said western divisions, as originally chartered and constructed, and from diverting the said through trade and traffic from the said eastern division.

And that it may be decreed by this court that your orator has the right, and is entitled to run trains of cars between La Crosse and Milwaukee over the said eastern and western divisions, rendering to such Milwaukee and St. Paul Railway Company a reasonable toll or compensation for such use of said western division; or if the court

shall be of opinion that your orator is not entitled to the relief last above prayed, that then it may be decreed by said court that your orator and the said Milwaukee and St. Paul Railway Company are bound to use and operate their respective divisions of said road in connection as a through line of railroad between La Crosse and Milwaukee, according to the spirit and intent of the act incorporating the La Crosse and Milwaukee Railroad Company, and that the said earnings and profits arising therefrom shall be divided between your orator and the said Milwaukee and St. Paul Railway Company, in the proportion of 95-200ths to your orator, and 105-200ths to the Milwaukee and St. Paul Railway Company, of all through business, and that your orator and the said Milwaukee and St. Paul Railway Company may respectively be entitled to the local earnings upon their respective divisions; and that your orator and the Milwaukee and St. Paul Railway Company respectively shall be entitled to compensation for the use of rolling stock owned by them respectively, used in common upon said road, or that such other basis of dividing the earnings of said road, so managed and conducted, shall be decreed as to this court shall seem just, and as shall be agreeable to equity and good conscience.

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And that an account may be stated between your orator and the said Milwaukee and St. Paul Railway Company of and concerning the profits arising from all through business between La Crosse and Milwaukee since June 12, 1863. upon such basis as the court shall determine, and that the said Milwaukee and St. Paul Railway Company shall be decreed to pay such proportion thereof as shall be decreed to your orator, and that leave may be reserved in said decree for your orator to apply to this court for a further decree appointing a manager of said entire road in case your orator and the said Milwaukee and St. Paul Railway Company shall not be able to agree among themselves as to the proper management of said entire road.

And that your orator may have such other and further or different relief as the nature of its case may require, and as shall be agreeable to equity and good conscience.

May it please your honors to grant unto your orator a writ of injunction, to be issued out of and under the seal of this honorable court, to be directed to the said Milwaukee and St. Paul Railway Company, its officers, directors, employees, and agents, enjoining and restraining them, and each and every of them, in due form of law, in the manner and to the effect aforesaid.

May it please your honors to grant unto your orator the most gracious writ of subpœna issued out of and under the seal of this honorable court, to be directed to the said James T. Soutter and Shepherd Knapp, survivors of Green C. Bronson, deceased, William Wallace Pratt, William White, and the said Milwaukee and St. Paul Railway Company, commanding them and each of them by a certain day, and under a certain penalty therein to be named, to be and appear before your honors in said court to answer the premises, and to stand to and abide by such order or decree in this

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cause as your honors may make, and as may be agreeable to equity and good conscience, and your orator will ever pray.

The Milwaukee and Minnesota Railroad Company,
By MATT. H. CARPENTER,
*Its Solicitor.*

MATT. H. CARPENTER,
*Of Counsel for Mil. and Minn. R. R. Co.*

144 *Exhibit No.* 1.

Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c., *vs.* THE LA CROSSE & MILWAUKEE Railroad Company and others. } In equity.

To the honorable circuit court of the United States for the district of Wisconsin:

In pursuance of an order of reference made in this cause on the twenty-eighth day of April, A. D. 1864, and of an order supplementary thereto, made on the eighth day of October, A. D. 1864, modifying the said order of the twenty-eighth day of April, A. D. 1864, and of an order made herein on the seventeenth day of April, A. D. 1865, supplementary to and modifying the orders above mentioned, I, Henry L. Palmer, named in the said several orders as auditor, do respectfully report:

That I have been attended by Hans Crocker, esq., receiver, and by James S. Brown, esq., his counsel, by John W. Cary, esq., as
145 counsel for the complainants and the Milwaukee and St. Paul Railway Company, and by Matt. H. Carpenter, esq., counsel for the Milwaukee and Minnesota Railroad Company and Alexander Fleming, and have taken proofs in regard to the matters referred to me by the several orders in addition to the proofs on file and the records of this cause, which proofs are herewith returned, and consist of depositions and exhibits.

The exhibits are marked alphabetically, from letter A to letter Y, both inclusive. Exhibit E continued, Nos. 1 and 2 following letter Y. A A to Y. Y Y, No. 4, both inclusive, and from A A A to Z Z Z, both inclusive, and from No. 1 to No. 30, both inclusive; the letter J being omitted in each series of the alphabet.

That Mr. Carpenter, counsel as above, on the 30th day of July, A. D. 1864, made before me the motion in writing herewith returned and marked Exhibit A, which motion, after argument, I denied, and to this decision Mr. Carpenter, on behalf of his clients, then and there excepted.

That on the same day, Mr. Carpenter, counsel as aforesaid, made before me the motion in writing herewith returned and marked Exhibit B, which motion, after argument, I overruled and denied, and to this decision the said Carpenter, on behalf of his clients, excepted.

That afterwards, and on the 25th day of August, A. D. 1864, Mr. Brown, on behalf of the receiver, moved that all testimony as to the relative rights of parties to the suit and others to the earnings of the road be excluded, and that the investigation by the auditor be hereafter limited to ascertaining the correctness or incorrectness of the accounts of the receiver as rendered up to June 1st, 1864.

And Mr. Cary, on behalf of the complainants in this case, moved to exclude all testimony relating to the relative rights of the eastern and western division of the road in the fund arising from the operation of the road since the appointment of the receiver; also all testimony relating to money which the receiver might or ought to have had in his hands which is not now or has not been in his hands, and that the investigation be confined to ascertaining the actual amount of money in his hands subject to the order of the court which may be applicable to the payment of interest on the mortgage in this suit.

After argument, these motions were severally overruled. Messrs. Brown and Cary, severally and in behalf of their respective clients, then and there excepted to such decisions. I further report that the receiver presented to me his books of account, kept by him as receiver, and a large mass of vouchers for the expenditures
146 made by him as receiver, which books and vouchers were then present for examination. Thereupon the respective parties before me stipulated and agreed that I should report, and I do therefore report further, as follows, pursuant to such stipulations:

That on the first appearance of the respective parties before me Mr. Carpenter, solicitor as aforesaid, stated that the great mass of the accounts of the receiver would not be attacked before the auditor by him or his clients; that he would file with the auditor special exceptions to the several items of said account which he intended to attack, and that as to all items not so specially excepted to the auditor might be excused from the manual labor of examining the vouchers to sustain the same, and the said Carpenter did in pursuance thereof file with me said special exceptions to items, which are herewith returned and marked respectively Exhibits K K K and K K K continued.

I further certify and report that Hans Crocker was appointed receiver of the La Crosse and Milwaukee railroad from Portage city to La Crosse, and of the property appertaining thereto in the case of Greene C. Bronson, James T. Soutter, and Shepherd Knapp *vs.* The La Crosse and Milwaukee Railroad Company and others, on the eighteenth day of May, A. D. 1860, and qualified as such receiver on the seventh day of June, A. D. 1860; that he was appointed receiver of the entire road and appurtenances in the case of Sebre Howard *vs.* The La Crosse and Milwaukee Railroad Company and others the 9th day of June, 1860, and qualified on the same day; that the last appointment was declared in the order making the same to be "subject, nevertheless, to a prior order of the court appointing him, the said Hans Crocker, to be receiver of the western portion of the said road from Portage City to La Crosse; that the said Hans Crocker was appointed receiver of all the railroad of the said La

Crosse and Milwaukee Railroad Company, being all the line of road extending from the city of Milwaukee to the city of La Crosse in the State of Wisconsin, together with all the depots, depot buildings, and other property belonging to said company, including all property of said company appurtenant to the said road," by an order made in this cause dated July 6, 1860, subject, nevertheless, to a prior order appointing him, the said Crocker, receiver of the western portion of said road from Portage City to La Crosse, the last-mentioned order did not require any bond to be filed by the receiver or other qualification as such; that the said Hans Crocker was appointed "receiver of the La Crosse and Milwaukee Railroad Company under the bill, with all the powers of his original appointment, by an order
147 of the court made in the case of Bouton *vs.* The La Crosse and Milwaukee Railroad Company and others, on the eighth day of October, A. D. 1862."

That the receiver took possession of the entire road from Milwaukee to La Crosse and all its appurtenances on the eleventh day of June, A. D. 1860, under the order above mentioned in the case of Howard *vs.* The La Crosse and Milwaukee Railroad Company and others, and also of the western division or that portion of the road extending from Portage City to La Crosse under the above mentioned in the case of Bronson, Soutter & Knapp *vs.* The La Crosse and Milwaukee Railroad Company and others, and operated the same as one entire and continuous line of road under said two orders just above mentioned from the 11th day of June, A. D. 1860, until the 13th day of June, A. D. 1863, and also under the two orders last above mentioned from their respective dates on to the said 13th day of June, A. D. 1863.

I further certify and report that the said Hans Crocker, as such receiver, from the 11th day of June, A. D. 1860, to the 28th day of February, A. D. 1865, has received and is chargeable with and accountable for the sum of four million five hundred and seventy-four thousand eighty-five dollars and fifty-seven cents, ($4,574,085 57.) This sum includes the gross earning and receipts of the entire road from Milwaukee to La Crosse from the said 11th day of June, A. D. 1860, to the 13th day of June, A. D. 1863, and does not include the earnings of the eastern division of the road from June 23th, 1863, to June 30th, 1864. This amount is obtained by charging the receiver the aggregate amount received by him as shown by his account filed in this cause June 1st, 1864, and also the amount received by him as shown by the account herewith returned and marked Exhibit E continued, as follows:

| | |
|---|---|
| Gross amount received from June 11, 1860, to May 31st, 1864, as per account filed June 1st, 1864.. | $4.255,821 52 |
| Gross amount received by Hans Crocker, receiver, from June 30, 1864, to February 28, 1865, as shown by account herewith returned and marked Exhibit E continued..... | 318,264 05 |
| Total..... | 4,574,085 57 |

That the receiver disbursed from the 11th day of June, A. D. 1860, to the 28th day of February, A. D. 1865, four million five hundred and thirty eight thousand seven hundred and ninety-eight dol-
148 lars and sixty-one cents, ($4,538,798 61,) which sum deducted from the aggregate amount received by and chargeable to the receiver left a balance remaining in his hands February 28, 1865, of $35,286 96, subject to such allowances as may be made to the receiver for his sevices.

The particulars in detail of such receipts and disbursements are contained in the receiver's account, filed June 1, 1864, and in the account herewith returned and marked Exhibit E continued. That the disbursements thus made by the receiver, and with which he is credited in his account, include the sum of seventy-three thousand eight hundred and one dollars and ninety-two cents, ($73,801 92,) paid on judgment in favor of Newcomb Cleveland against the La Crosse & Milwaukee Railroad Company; and to this payment special exception is taken by the counsel for the Milwaukee & Minnesota Railroad Company in and by Exhibit K K K. I have ascertained and report that the several sums paid by the receiver on said Cleveland judgment, making in the aggregate the said sum of seventy-three thousand eight hundred and one dollars and ninety-two cents, ($73,801 92,) were paid by him on the authority and in pursuance of two several orders made in the case of Green C. Bronson, James T. Soutter, and Shepherd Knapp *vs.* The La Crosse and Milwaukee Railroad Company and others, at the dates and for the amounts following, viz:

| | |
|---|---|
| June 29, 1861, ten thousand dollars | $10,000 00 |
| July 18, 1861, twenty thousand dollars | 20,000 00 |
| And of two orders made in this cause of the dates, and for the amounts following, viz: April 22, 1861, twenty-eight thousand and eight hundred and one dollars and ninety-two cents | 28,801 92 |
| November 28, 1802, fifteen thousand dollars | 15,000 00 |
| | 73,801 92 |

Copies of which orders are herewith returned, and marked respectiuely Exhibits E E E, F F F, G G G, H H H.

And I further report that the said orders were sufficient and proper authority for the receiver to make such payments, and that the same were properly made by him. I therefore audit such payments, and allow and credit the same to the receiver at the said amount of $73.801 92, and disallow the said exceptions of the Milwaukee & Minnesota Railroad Company thereto.

Such disbursements include the sum of $24,998 36 expended
149 for new buildings comprising the two items contained in Exhibit C, under the head of new buildings, eastern division $10,757 88, and western division $1,4240 48; also the sum of $7,057 13, being the item contained in Exhibit E continued under the head of

new buildings for that amount. That portion of those expenditures assigned to the eastern division under the head of new buildings in Exhibit C, viz: $10,757 88, is specially excepted to by the Milwaukee and Minnesota Railroad Company in Exhibit K K K, and the expenditure of $7,707 13 being the item under the head of new buildings in Exhibit E continued is also specially excepted to by the same party in and by Exhibit K K K continued. I have ascertained and report that the said amounts thus expended by the receiver and credited to him in his said accounts under the head of new buildings were expended in the erection of new buildings which were necessary for the proper operation of the road and that such expenditures were properly made and were resonable, and I audit and allow the same to the receiver and disallow the exceptions thereto.

I further report that all the remaining disbursements made by the receiver from June 11, 1860, to May 31, 1864, embraced in his account filed June 1, 1864, and making, with the two items of $73,801 92 paid on the Cleveland judgment and the item of $24,998 36 expended on new buildings first above mentioned, in the aggregate the sum of four millions one hundred and eighty-five thousand seven hundred and four dollars and forty-four cents, ($4,185,704 44,) were actually made by him in the proper execution of his trust as such receiver, and that he is entitled to credit therefor in his account.

I further report that the disbursements made by the receiver from the 30th day of June, 1864, to the 28th day of February, A. D. 1865, embrace an item of $9,015 16 for "repairs of tools and machinery," contained in the account herewith returned and marked Exhibit E continued, which is specially excepted to by the counsel for the Milwaukee & Minnesota Railroad Company, and by Exhibit R R R continued. I audit and allow this item as a proper expenditure made by the receiver, and for which he is entitled to credit in his account, and disallow the exceptions thereto.

The disburements made by the receiver during the period of time last aforesaid also embrace the sum of thirty-six thousand one hundred eighteen dollars and eighty-six cent, ($36,118 86.) containing in the account herewith returned and marked Exhibit E continued, under the head of "use of rolling stock." To this credit special exception is also made by the same party in and by Exhibit K K K continued.

That the entire road and rolling stock were placed in the possession of the Milwaukee & St. Paul Railway Company by the orders made by the court in the several cases on the 12th day of June, 1863, one of which orders, viz: the order in the case of Bronson, Soutter, and Knapp against the La Crosse & Milwaukee Railroad Company and others, on the 12th day of June, A. D. 1863, still remains in full force, and not reversed or rescinded. The rolling stock remained in the possession of the Milwaukee & St. Paul Company by virtue of the order last mentioned, and this sum is charged by that company to the receiver for use of rolling stock thus in its possession. That this item is a proper credit to the receiver in his account, and as between the eastern division and its owners and the Milwaukee & St. Paul Railway Company should be adjusted auditing the account of the

latter company. I therefore audit it and allow this item to the receiver as a proper disbursement made by him for which he is entitled to credit and disallow the exceptions thereto.

The third item mentioned in the special exception of the Milwaukee & Minnesota Railroad Company contained in Exhibit K K K continued to the account marked Exhibit E continued, as follows: Milwaukee & St. Paul Company, $109,950 82, I suppose to refer to the 38th item contained in Exhibit E, and is not appropriate to any credit continued in Exhibit E continued; and I disallow said special exception so far as it related to any part of the account marked Exhibit E continued; all the other items contained in the credit side of the account marked Exhibit E continued, I audit and allow to the receiver as credits to which he is entitled for disbursements properly made by him in the execution of his trust as such receiver. I have ascertained and further report that from the eleventh day of June, 1860, to the thirteenth day of June, 1863, the said Hans Crocker, receiver, operated and managed the business of the said railroad as one entire line of road extending from Milwaukee to La Crosse, and received and kept and disbursed the income thereof as one common fund; and that during the period of time aforesaid, his account of receipts and disbursements as receiver was kept as one general account of the income derived by him from the business of the entire road, and the expenditures made by him in the operation of the entire road, without separation or division, except as to local earnings and local expenses; and that the road was properly operated
151 in that manner, the income was properly treated by the receiver as a common fund, and the disbursements on account of the entire line of road were properly made therefrom.

I have ascertained and report that the sum of thitry-eight thousand five hundred and sixty-nine dollars and forty-two cents should be allowed to the receiver for his services as receiver from the 11th day of June, 1860, to and including the 28th day of February, 1865. This amount is made up as follows, viz:

| | |
|---|---|
| For services as receiver from the 11th day of June, 1860, to the 11th June, 1863, three years, at $10,000 per year | $30,000 00 |
| For services as receiver from the 11th June, 1863, to the 28th February, 1865, one year eight months and seventeen days, at the rate of $5,000 per year | 8,569 42 |
| Total | 38,569 42 |

I have also ascertained and further report that the following sums should be allowed to the receiver for his expenses paid and incurred by him as receiver and not credited to him in his account as filed, viz:

| | |
|---|---|
| The amount of Cary & Pratt's account against the receiver for professional services rendered in 1860 and 1861, and embraced in the account marked Exhibit L L L | $1,150 00 |

| | |
|---|---|
| The amount of Cary & Pratt's account for professional services as attorneys and counsel for receiver from 27th October, 1860, to 12th June, 1864, allowed as charged in Exhibit M M M | $5,435 00 |
| For account of Cary & Pratt for disbursements made by them as attorneys for receiver in professional business transacted by them for receiver allowed, as charged in account marked Exhibit N N N | 514 23 |
| For account of Cary & Pratt for services as attorneys and counsel for receiver from Sept. 22, 1864, to March, 1865, allowed as charged in Exhibit X X X | 700 00 |
| For the account of James S. Brown for professional services as attorney and counsel for receiver, allowed as charged in the account marked Exhibit No. 12 | 1,600 00 |
| Total amount of expenses | 9,399 23 |
| Add amount of allowance for services as receiver as above | 38,569 42 |
| Total for services and expenses | 47,968 65 |

152 I have further ascertained and report that the receiver is subject to the following contingent liabilities growing out of his receivership, and that the amount and nature of the estate of each is as hereinafter stated:

| | |
|---|---|
| First, a claim of Frany Loof, administrator of the estate of Nicholas Thull, deceased, for five thousand dollars damages claimed for the death of said Thull, alleged to have been killed in consequence of the negligence of employees on the road while operated by the receiver; an action is pending on this claim against the receiver in the circuit court of Milwaukee co | $5,000 00 |
| A claim of Peter Roth, administrator of the estate of Matthias Schule, deceased, for five thousand dollars damages, claimed for the death of said Schule, alleged to have been killed in consequence of the negligent operation of the road by employees; an action was brought on this claim in the circuit court of Milwaukee county, and was tried at the last term of that court, and the trial resulted in the plaintiffs being nonsuited | 5,000 00 |
| Also a claim of Joseph Leutes for ten thousand dollars for damages sustained by the breaking of his leg to such extent as to render subsequent amputation necessary, alleged to have been the result of negligent management of a train of cars by employees; on this claim an action was commenced in the circuit court | |

| | |
|---|---|
| of Monroe county, which has been removed to, and is now pending in the circuit court of Milwaukee county; amount claimed | $10,000 00 |
| Total amount of contingent claims | 20,000 00 |

Schedule First, hereto annexed, states the account of the receiver as audited.

I further report that the Milwaukee and St. Paul Railway Company took possession of the eastern division of the La Crosse and Milwaukee railroad, extending from Milwaukee to Portage City, and of all the rolling stock and appurtenances thereon and belonging thereto, including tools, machinery, and supplies then on hand, pursuant to orders of the court made on the 12th day of June, 1863, as well as of the western division, or that portion of said road extending from Portage City to La Crosse, and operated the same, and received the earnings thereof, and made disbursements therefor, from that date to and including the 30th day of June, A. D. 1864; that Exhibit E, herewith returned, contains a statement of the earnings of said road from Milwaukee to Portage City received by the said Milwaukee and St. Paul Railway Company, and the disbursements made by the said company on account of said road between the dates last aforesaid, as claimed by said company to item No. 7 contained in this account, which is a credit to the Milwaukee and St. Paul Railway Company, as follows: "Repairs, tools, &c., $6,978 83," the Milwaukee and Minnesota Railroad Company takes special exception in and by Exhibit K K K. This credit is for the sum
153 named, expended in the repairs of tools and machinery, and as it is taken into consideration in determining the rent or compensation chargeable to the Milwaukee and St. Paul Railway Company for the use of repair shops and tools in a subsequent part of this report, I allow and audit the amount to the Milwaukee and St. Paul Railway Company as a proper expenditure and credit, and disallow the exception thereto.

The item No. 28, contained on the credit side of the account, Exhibit E, new buildings, $27,497 84, is also specially excepted to by the Milwaukee and Minnesota Railroad Company in and by Exhibit K K K. I have ascertained and report that this sum was expended for the erection of new buildings on the machine shop grounds in Milwaukee, extension of depot buildings, erection of water houses, and other improvements on the eastern division; that all these erection were not necessary for the eastern division, operated as a road, commencing at Milwaukee and terminating at Portage City, and not forming a part of a through route to the Mississippi river; that these improvements were projected and commenced, and the expenditure mainly made while the two divisions of the road were operated together as one through line, and before the opening of another route from Portage City to Milwaukee was contemplated, and that as the said railroad from Milwaukee to Portage City was then circumstanced these buildings and improvements were necessary to its proper and

profitable operation, and the expenditure was properly and prudently made. I therefore audit and allow this credit, amounting to said sum of $27,497 84, to the Milwaukee and St. Paul Railway Company, and disallow the said exception thereto.

The credit contained in Exhibit E, and marked No. 38, as follows: "Milwaukee and St. Paul railway, $109,950 82," is specially excepted to by the Milwaukee and Minnesota Railroad Company in and by Exhibit K K K. This credit is made up of the following items, viz:

| | |
|---|---|
| Paid receiver April 23d, 1864 | $68,285 50 |
| Charge for the earnings of the western division from June 1st to June 12th, 1863, inclusive | 20,761 17 |
| Mileage on western division from April 25th to May 1st, 1865, inclusive | 2,396 48 |
| Same, May 1st to June 1st, 1863 | 11,958 02 |
| Same, June 1st to June 12th, 1863 | 4,672 79 |
| Advance charges on goods in transit, June 13, 1863 | 1,886 86 |
| | 109,950 82 |

It contains a credit to the Milwaukee and St. Paul Railway Company of $19,027 29, for the use of rolling stock from April 25, 1863, to and including June 12, 1863, upon the theory that said company owned and was entitled to charge for the use of all the rolling stock on the road at that date, except the proportion of the stock purchased by the receiver which belonged to the eastern division under the provisions of the decree in the land grant case, which vested the title of that stock in the owners of the respective divisions in proportion to their net earnings from the 11th June, 1860, to the date of the decree. Applying to this credit the principle by which I determine and report what should be charged for the use of rolling stock formerly used on said railroad, as a part of the accounts reported by me, I report that the Milwaukee and St. Paul Railway Com-
153½ pany is entitled to a credit in this item for mileage of rolling stock, for which credit is therein given to said company for the sum of $1,847 60, and is not entitled to credit for the additional sum of $17,179 69 embraced therein, and I sustain the said exception so far as it relates to the said $17,179 69, and deducting the last named amount from the amount of said credit, I audit and allow the same at the balance thereof, that is to say, $92,771 13, and I disallow said exception so far as the said relates to such balance.

The said Exhibit E contains a credit to the Milwaukee and St. Paul Railway Company under the head "Use of rolling stock," $166,192 30, marked No. 39, which is also specially excepted to by the Milwaukee and Minnesota Railway Company in and by Exhibit K K K; and I am also directed by the order made by the court in this cause on the 8th day of October, 1864, to "ascertain and report what should be charged for the use of rolling stock formerly used on said railroad as a part of the accounts reported by" me. The dis-

position of the last mentioned exception, and the proper performance of the duty imposed upon me by the order above mentioned, involve an inquiry into the ownership and amount of the rolling stock on the road on the 13th day of June, 1863; and I have ascertained and report that under the adjudications made by the district and circuit courts in this case and in the case of Bronson, Soutter, and Knapp *vs.* The La Crosse and Milwaukee Railroad Company and others, and by the Supreme Court of the United States in the case of The Milwaukee and Minnesota Railroad Company *vs.* James T. Soutter, survivor, &c., forty box cars, and such proportion of the rolling stock as was purchased and put on the road by the receiver as the net earnings of the western division, from the 11th of June, 1860, to the 13th day of January, 1862, bear to the net earnings of the eastern division for the same period of time, was owned by the Milwaukee and St. Paul Railway Company. And that all the remaining rolling stock on the road, on the 13th day of June, 1863, belonged to and was owned by the owners of the eastern division of said road. That the total value of the rolling stock on the said railroad on the 13th day of June, 1863, including the stock owned by the Milwaukee and St. Paul Railway Company, was $659,295 58; that the value of the share owned by the Milwaukee and St. Paul Railway Company was $52,199 00; and the value of the share owned by the owners of the eastern division was $607,096 88; that the respective owners of such rolling stock are each entitled to charge the other for the use of the rolling stock on the respective divisions of the road in the proportion of their ownership as above stated, and are chargeable with the repairs of their respective shares of the rolling stock; that the evidence before me does not afford the data from which the amount which should be charged to the respective parties for the use of 153¾ rolling stock from the 13th day of June, 1863, to the 28th day of February, 1865, can be ascertained with accuracy, but an approximate result is obtained which is believed to be substantially correct. I have ascertained and report that the Milwaukee and St. Paul Railway Company should be charged, in favor of the receiver representing the eastern division, for the use of the share of the rolling stock belonging to the eastern division, on the western division, and on its other road, from the 13th day of June, 1863, to the 28th day of February, 1865, $123,374 40; that the sum of $36,118 86, charged to the receiver by the Milwaukee and St. Paul Railway Company for the use of rolling stock from June 30th, 1864, to February 28th, 1865, contained in Exhibit E continued, should be charged back to said company.

That the Milwaukee and St. Paul Railway Company, on the 13th day of June, 1863, received from the receiver, with the road and rolling stock, tools and supplies belonging to the entire road, including supplies on the eastern division, amounting in value, as per receiver's inventory, Exhibit No. 74, $65,035 07. That these supplies belonged to the owners of respective divisions of the road in proportion to the amount of the rolling stock owned by each; that the proportion of such supplies which belonged to the eastern division was

in value $59,885 98, and that the Milwaukee and St. Paul Railway Company is chargeable with that amount; that the Milwaukee and St. Paul Railway Company is entitled to credit, as against the receiver representing the eastern division, for the use of their share of the rolling stock on the eastern division, from the 13th of June, 1863, to the 28th of February, 1865, $19,667 00; and also for repairs of the share of the rolling stock belonging to the eastern division for the same time, $275,536 53; and the amount which the Milwaukee and St. Paul Railway Company credited to the receiver for the use of the rolling stock of the eastern division, on its roads, from the 30th of June, 1864, to the 28th of February, 1865, viz: 5,767 53, and contained in Exhibit E continued, should be credited to the said Milwaukee and St. Paul Railway Company in its account; that the Milwaukee and St. Paul Railway Company should be charged with the amount which is charged by said company, to the receiver, as shown in Exhibit E continued, for repairs of locomotives, $10,569 36, and the amount there charged for repairs of cars, $16,280 87; all use of rolling stock and all charges for repairs thereto being embraced in the charges and credits for use of rolling stock and for repairs of rolling stock to be made as above stated.

I further report that the Milwaukee and St. Paul Railway Company received with the eastern division of the said railroad, June 13th, 1863, 13,903 cords of wood, which was worth $2 50 per cord, amounting to the sum of $34,757 50; and as the eastern division is charged in the account of said company with all the fuel used thereon,
154 this amount is a proper charge against it. It is also proper to charge the Milwaukee and St. Paul Company with the transportation of 1,300 tons of iron rails over the eastern division from Milwaukee to Portage City, for its road between Portage City and Columbus, at $1 25 per ton, amounting to $1,625 00, and also with the transportation of 36 car loads of ties over the eastern division at $10 per load—$360 00; and the said company is also chargeable with and accountable for the gross earning of the eastern division from the 13th day of June, 1863, to the 30th day of June, 1864, amounting as shown by Exhibt E, to $960,616 80, and I report that all the remaining expenditures and disbursements made by the Milwaukee and St. Paul Railway Company, and set forth in Exhibit E as credits, (except the items hereinbefore especially mentioned, and the items therein contained No. 5 and 6, being for repairs of locomotives, $8,433 79, and repairs of cars, $19,990 20,) were actually and properly made by the said company and are allowed and audited as proper expenditures duly made, and for which said company is entitled to credit.

I have further ascertained and report that adjusting the account of the Milwaukee and St. Paul Railway Company upon the principles above stated, the said company is chargeable with and accountable for the sum of one million two hundred and fifty-two thousand one hundred and thirty 43-100 dollars..... $1,252,130 43.

| | |
|---|---|
| And it is entitled to credits amounting in the aggregate to nine hundred and twenty-five thousand eleven 91-100 dollars | $925,011 91 |
| Leaving a balance | 327,118 52 |

Due by said company to the receiver of three hundred and twenty-seven thousand one hundred and eighteen 52-100 dollars.

I further report that the income of the eastern division of the road, for the months of May and June 1864, was received and the operating expenses thereof for the same time were disbursed by the Milwaukee and St. Paul Railway Company, and are embraced in the account of said company as credited; that the receiver took possession of the eastern division of the road on the 1st day of May, 1864, but the income and disbursements thereof for said months of May and June, 1864, are not embraced either in the account of the receiver filed June 1st, 1864, or with the account herewith returned and marked Exhibit E continued. The earnings and disbursements of the eastern division for the two months mentioned are properly carried into the account of the Milwaukee and St. Paul Railway Company, but as the receiver took possession of the road on the 1st day of May, 1864, he is chargeable with its earnings and accountable for its management from that time, and he is chargeable with the net
155 earnings of the eastern division for the two months named, in addition to the amount embraced in his account as audited.

| | |
|---|---|
| That the net earnings of the eastern division for May and June, 1864, amount to the sum of forty-seven thousand five hundred and fifty-seven 42-100 dollars | $47,557 42 |
| This amount added to the balance in the receiver's hands Feb. 28th, 1865, viz | 25,286 96 |
| Would leave a balance in his hands | 82,844 38 |

At that date eighty-two thousand eight hundred and forty-four 38-100 dollars.

Subject to such allowance as may be proper for his services as receiver, and for expenditures made and incurred by him for legal services heretofore rendered as above set forth.

And I further report that I have considered and examined the several exceptions of Alexander Fleming and the Milwaukee and Minnesota Railroad Company to the account of the said Hans Crocker, receiver, filed June 1st, 1864, and the supplemental account filed June 28th, 1864, and that the said exceptions filed by each of said parties, and respectively numbered from No. 1 to No. 8 inclusive, are not well taken, and are each and all of them disallowed.

H. L. PALMER.

A.

SCHEDULE FIRST.

| Hans Crocker, receiver, | | Dr. |
|---|---|---|
| To gross receipts as receiver, from June 11, 1860, to May 31, 1866, as shown by account filed June 1st, 1864 | | $4,255,821 52 |
| To gross receipts as receiver from June 30th, 1864, to February 28th, 1865, as shown by Exhibit E continued | | 318,264 05 |
| | | 4,574,085 57 |
| By expenditures from June 11th, 1860, to May 31st, 1864, as shown in detail by receiver's accounts filed June 1st, 1864 | $4,185,704 44 | |
| By expenditures from June 30th, 1864, to February 28th, 1865, as per Exhibit E continued | 353,094 17 | |
| | | 4,538,798 61 |
| Balance in hands of receiver Feb. 28th, 1865 | | 35,286 96 |
| By amount allowed receiver for services from June 11th, 1860, to Feb. 28th, 1865 | $38,569 24 | |
| By amount due to Cary & Pratt for professional services allowed as receiver | 1,150 00 | |
| By amount due Cary & Pratt for professional services allowed as receiver | 5,435 00 | |
| By amount due Cary & Pratt for professional services allowed as receiver | 514 23 | |
| By amount due Cary & Pratt for professional services allowed as receiver | 700 00 | |
| By amount due James S. Brown for professional services allowed to receiver | 1,600 00 | |
| | | 47,968 65 |
| Balance due receiver | | 12,681 69 |
| Contingent claims against the receiver at the amount claimed | | $20,000 00 |
| Amount of net earnings for the months of May and June, 1864 | | $47,557 42 |

| | | |
|---|---|---|
| Add balance Feb. 28th, 1865, as above | | $35,286 96 |
| | | 82,844 38 |
| Deduct allowances as above | | 47,968 65 |
| Balance | | 34,875 73 |

B.

SCHEDULE SECOND.

Milwaukee and St. Paul Railway Co., in account with Hans Crocker, receiver:

| | | |
|---|---|---|
| To gross earnings eastern division La Crosse and Milwaukee railroad from June 13, 1863, to June 30, 1864 | $960,616 80 | |
| To use of railway stock belonging to eastern division from June 13, 1863, to Feb. 28th, 1855 | 123,374 40 | |
| To this amount charged receiver for use of rolling stock from June 30, 1864, to Feb. 28th, 1865, in Exhibit E continued, now charged back | 36,118 86 | |
| To amount of supplies received with and belonging to the eastern division June 13, 1863 | 59,885 98 | |
| 157 To amount charged receiver for repairs of locomotives from June 30, 1864, to Feb. 28, 1865, "Exhibit E, continued" | 10,569 36 | |
| To amount charged receiver for repairs of cars from June 30, 1864, to Feb. 28th, 1865, in "Exhibit E, continued" | 16,280 87 | |
| To 13,903 cords wood received with eastern division June 13, 1863, at $2 50 per cord | 34,757 50 | |
| To 1,300 tons iron transported on eastern division | 1,625 00 | |
| To 36 car loads ties transported on eastern division | 360 00 | |
| To rent of repair shops, tools, and machinery on and belonging to eastern division from 13, 1863, to Feb. 28, 1864, 1 year, 8 months, and 10 days, valued at $50,000, at 10 per cent | 8,541 66 | |
| | | $1,152,130 43 |

| | | |
|---|---|---|
| By items of credit contained in Exhibit E. excluding the amount of items Nos. 4, 5, 38, and 41, 42 | $531,269 72 | |
| By credit in item No. 38, Ex. E, at the amount at which the same is audited | 92,771 13 | |
| By use of rolling stock of Milwaukee and St. Paul company on eastern division from June 13, 1863, to Feb. 28, 1865 | 19,667 00 | |
| By repairs of rolling stock of eastern division by Milwaukee and St. Paul company | 275,536 53 | |
| By amount credited to the receiver for use of rolling stock of eastern division on roads of St. Paul company, as shown by "Exhibit E, continued" | 5,767 53 | |
| | | $925,011 91 |
| By balance due the receiver by St. Paul company | | 327,118 52 |

158 *Exhibit No.* 2

Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILroad *et al.*

The exceptions of the Milwaukee and St. Paul Railway Company to the report of Henry L. Palmer, auditor, filed in this cause on the 28th day of June, 1865.

First. The Milwaukee and St. Paul Railway Company except to so much of said report as disallows its claim for the use of rolling stock, as charged and contained in Exhibit E, and E continued, attached to said report as follows, to wit: 1st item, No. 39 of Exhibit E, for the sum of $166,192 30. 2d item, No. , of Exhibit E continued, for the sum of $36,118 86. 3d, so much of item No. 38, of Exhibit E, as was disallowed by said auditor, amounting to the sum of $17,179 69; all of which said amounts should have been allowed and credited as contained in said Exhibits E and E continued.

Second. The Milwaukee and St. Paul Railway Company except to so much of said report as finds that only forty box cars, and such proportion of the rolling stock as was purchased and put on the road by the receiver as the net earnings of the western division from the 11th of June, 1860, to the 13th day of January, 1862, bear to the net earnings of the eastern division for the same period of time, is owned

by the Milwaukee and St. Paul Railway Company, and that all the remaining stock on the road on the 13th day of June, 1863, belonging to and was owned by the owners of the eastern division of said road.

Third. The Milwaukee and St. Paul Railway Company except to so much of said report as charges it for the use of the share of the rolling stock belonging to the eastern division on the western division, and on its other roads, from the 13th day of June, 1863,
159 to the 28th day of February, 1865, the sum of $123,374 40; whereas the auditor should have found and reported that no part of said rolling stock which was on said road on the 11th day of June, 1860, when the receiver took possession, was in the possession or under the control of said receiver, or of the Milwaukee and St. Paul Railway Company as receiver, or in the custody or control of the court after the 12th day of June, 1863, but that the same was in the possession and control of the Milwaukee and St. Paul Railway Company as owner.

Fourth. The Milwaukee and St. Paul Railway Company except to so much of said report as finds that the tools and supplies belonging to the entire road, belonged to the owners of the respective divisions of the road in proportion to the amount of the rolling stock owned by each.

Fifth. The Milwaukee and St. Paul Railway Company excepts to said report so far as it finds that said Milwaukee and St. Paul Railway Company should be charged with the sum of $59,885 98, for supplies received by them June 13, 1863, and the sum of $34,757 50 for wood received at the same time; whereas such supplies and wood are necessarily appurtenant to the road, and said report should have provided that the wood and supplies now on hand on said division should be received in lieu of those received by said Milwaukee and St. Paul Railway Company on said 13th day of June, 1863, or at least they should be so received to the extent of the value of the supplies and wood now on hand on said division.

JOHN W. CARY,
*Solicitor for M. & St. P. R. W. Co.*

160 *Exhibit No.* 3.

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD Company and others.

The Milwaukee and Minnesota Railroad Company comes here into court, and takes and shows the court, (by leave of the court expressly granted for that purpose,) an additional exception to the report of H. L. Palmer, auditor, appointed to report on the receiver's accounts in this cause, as follows:

12th exception. For that the said auditor has, in regard to the charge which the Milwaukee and Minnesota railroad claims should be made, for use and repairs of rolling stock belonging to the eastern division, used upon the western division, reported to said court as follows, viz: The said Exhibit E contains a credit to the Milwaukee and St. Paul Railway Company, under the head "use of rolling stock," $166,192 30, marked No. 39, which is also specially excepted to by the Milwaukee and Minnesota Railroad Company in and by Exhibit K K K; and I am also directed by the order made by the court in this cause on the 8th day of October, 1864, to "ascertain and report what should be charged for the use of rolling stock formerly used on said railroad as a part of the accounts reported by me." The disposition of last-mentioned exception, and the proper performance of the duty imposed upon me by the order above mentioned, involves an inquiry into the ownership and amount of rolling stock on the road on the 13th day of June, 1863; and I have ascertained and report that under the adjudications made by the district and circuit courts in this case, and in the case of Bronson, Soutter, and Knapp *vs.* The La Crosse and Milwaukee Railroad Company and others, and by the Supreme Court of the United States in the case of the Milwaukee and Minnesota Railroad Company *vs.* James T. Soutter, survivor, &c., forty box cars, and such proportion of the
161 rolling stock as was purchased and put on the road by the receiver, as the net earnings of the western division, from the 11th of June, 1860, to the 13th day of January, 1862, bear to the net earnings of the eastern division for the same period of time, was owned by the Milwaukee and St. Paul Railway Company; and that all the remaining rolling stock on the road on the 13th day of June, 1863, belonged to and was owned by the owners of the eastern division of said road. That the total value of the rolling stock on the said railroad on the 13th day of June, 1853, including the stock owned by the Milwaukee and St. Paul Railway Company, was $659,295 88; that the value of the share owned by the Milwaukee and St. Paul Railway Company was $52,199; and the value of the share owned by the owners of the eastern division was $607,096 88; that the respective owners of such rolling stock are each entitled to charge the other for the use of the rolling stock on the respective divisions of the road in the proportion of their ownership, as above stated, and are chargeable with the repairs of their respective shares of the rolling stock; that the evidence before me does not afford the date from which the amount which should be charged to the respective parties for the use of the rolling stock from the 13th day of June, 1863, to the 28th day of February, 1865, can be ascertained with accuracy, but an approximate result is obtained which is believed to be substantially correct. I have ascertained and report that the Milwaukee and St. Paul Railway Company should be charged in favor of the receiver, representing the eastern division, for the use of the share of the rolling stock belonging to the eastern division, on the western division and on its other road, from the 13th day of June, 1863, to the 28th day of February, 1865, $123,374 40; that the sum of $36,118 86, charged to the

receiver by the Milwaukee and St. Paul Railway Company for the use of rolling stock from June 30, 1864, to February 28th, 1865, contained in "Exhibit E continued," should be charged back to said company; which report shows that the sum allowed by the auditor, viz: $123,374 40 was arrived at by the auditor upon the supposition that Exhibit E and continuation of Exhibit E contained a credit for the use of a certain amount of rolling stock down to February 28, 1865, and the report allows for the use of rolling stock belonging to the eastern division at the same rate for the different amount in
162 value, whereas the said Exhibit E and continuation of Exhibit E did not contain any charge or credit whatever for rolling stock after September 1, 1864, as appears from the monthly reports filed in this cause, and as appears from the testimony of E. H. Goodrich, printed testimony, pages 102, 103, as follows, viz:

"Ques. In paper marked 'continuation of Exhibit E,' filed April 13, 1865, is an item 'use of rolling stock, $36,118 86;' does this item ontain any charge for use of rolling stock subsequent to Sept. 1, 1864?

"Ans. It does not, as I understand it.

"Ques. When I understand that Exhibit E and continuation of Exhibit E show the amount charged the eastern division for the use of rolling stock from June 13, 1863, to Sept. 1, 1864, is this correct?

"Ans. That is as I understand it.

"Ques. Since Sept. 1, 1864, where has the rolling stock been used which was on the old road when the receiver was appointed?

"Ans. It has been used on the road between Milwaukee and La Crosse by the way of Watertown, Columbus, and Portage City, being the western division and the Watertown road."

Consequently the said sum allowed by the auditor does not contain any allowance for the use of rolling stock belonging to the eastern division used by the St. Paul company upon its road from La Crosse to Milwaukee, by the way of Watertown, from September 1, 1864, to February 28, 1865, whereas the said auditor should have allowed and reported for the use of the rolling stock belonging to said eastern division, used upon said western division from September 1, 1864, to February 28, 1865, the sum of 128,149 26 dollars, as shown by the testimony of E. H. Goodrich, printed page 106, and Exhibit Z Z Z, attached to said testimony.

This exception is filed, by special leave of court, as specification or more particular statement of exception eleven, heretofore filed by the Milwaukee and Minnesota Railroad Company.

MATT. H. CARPENTER.
*Sol. for Mil. & Min. R. R. Co., Def't.*

163

164 *Exhibit No. 4.*

Report of the auditor on the twelfth exception of the Milwaukee and Minnesota Railroad Company, filed July 14th, 1865.

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

To the hon. the circuit court of the United States for the district of Wisconsin:

In pursuance of an order of reference made in this cause on the eleventh day of July, A. D. 1865, and hereto annexed, I, Henry L. Palmer, auditor named therein, do certify and report that I have examined the 12th special exception filed in behalf of the Mil-
165 waukee and Minnesota Railroad Company to the report heretofore made by me in this cause, and the subject-matter therein referred to, and have reviewed the portion of my former report in said exception mentioned and the evidence taken before me on which the same was founded. That Exhibit E, annexed to the testimony heretofore returned, purports on its face to be an account of the earnings and expenditures of the eastern division of the La Crosse and Milwaukee railroad from June 13th, 1863, to June 30th, 1864, inclusive, and "Exhibit E continued" purports to be a similar account, covering the time from the 1st September, 1864, to the 28th day of February, 1865. These accounts both contain credits to the eastern division for the use of rolling stock belonging to it, by the Milwaukee and St. Paul Railway Company. These credits formed a material element in the computation made by me to ascertain the amount of property chargeable to the Milwaukee and St. Paul Company for the use of the rolling stock of the eastern division and the amount chargeable to the Milwaukee and St. Paul Company as ascertained and reported in my former report, to wit, $123,374 40 was based upon the understanding by me that the credit contained in Exhibit E continued, "earnings from use of rolling stock of eastern by the Milwaukee and St. Paul Railway Company for the entire time from June 30th, 1864, to February 28th, 1865." On examination of the monthly reports of the earnings and disbursements of the eastern division for the months of September, October, November, and December, 1864, and the months of January and February, 1865, on file in the office of the clerk of this court in this cause shows that Exhibit E continued, contains no charge or credit for the use of rolling stock for any period of time subsequent to the 31st day of August, 1864, and I therefore report that the said sum heretofore reported by me; that is to say, $123,374 40, as chargeable to the account of the Milwaukee and St. Paul Railway Company for the use of the rolling stock of the eastern division of the La Crosse and Mil-

waukee railroad is chargeable to the said company for the use of such stock from the 13th day of June, 1863, to the 31st day of August, 1864, and that the account against the Milwaukee and St. Paul Railway Company as stated in "schedule second" annexed to my former report, does not contain any charge against the said company for the use of the rolling stock belonging to the eastern division from the 1st September, 1864, to and including the 28th day of February, 1865.

I further report that I am unable, from the evidence before me
166 on the former reference to ascertain accurately what sum should be charged the Milwaukee and St. Paul Railway Company for the use of rolling stock belonging to the eastern division from September 1st, 1864, to February 28th, 1865, for the reason that the testimony does not show what amount of the rolling stock in value or what particular stock in kind of that belonging to the eastern division was used on the roads of the St. Paul company after September 1st, 1864. I can only arrive at an approximate result. The cost of the entire mileage or the value of the use of all the rolling stock on the roads of the Milwaukee and St. Paul Railway Company from September 1st, 1864, to February 28th, 1865, I ascertain by multiplying the mileage of each class of rolling stock as shown in Exhibit Z Z Z, by the value or cost of the mileage of that class as given in the testimony of E. H. Goodrich, esq., page 104 of printed testimony, and thus ascertain and report that the whole cost of the mileage on the roads of the St. Paul company, or the value of the use of all the rolling stock used thereon for the period of time mentioned, was as follows:

| | |
|---|---|
| Locomotives, 434,577, at 25c | $108,644 25 |
| Passenger cars, 485,933, at 5c | 23,296 65 |
| Baggage, mail, and express cars, 230,172, at 3c | 6,905 16 |
| Freight cars, 1,514,469, at 2c | 30,289 38 |
| Total | 169,139 44 |

All of the rolling stock on the road when the receiver took possession of it, June 11th, 1860, was used on the road of the Milwaukee and St. Paul Railway Company after September 1st, 1864, as appears by the testimony. How much of that purchased and built by the receiver, amounting in value to $147,985 99, was so used, and how much of it was used on the eastern division after that date I am unable to determine from the testimony. I assume that all the rolling stock on the road on the 1st September, 1864, except that portion of the stock purchased and built by the receiver, which, in the decree in the land grant case was adjudged to belong to the eastern division, amounting in value to $121,178, was used after that date on the roads of the Milwaukee and St. Paul company, and that the last mentioned share of the stock remained after September, 1864, on the eastern division. I assume that the stock purchased and built by the Milwaukee and St. Paul Railway Company, and in use on its

roads from September, 1864, to February 28th, 1866, was of the same value of similar stock theretofore on the road.

167 The whole value of the rolling stock exclusive of that purchased and built by the Milwaukee and St. Paul Railway Company was ..... $659,295 88

Of this it is assumed that there remained in use on the eastern division after September 1st, 1864, its share of the stock acquired by the receiver ..... 121,178 00

Balance ..... 538,117 88

To this balance which was thereafter used by the Milwaukee and St. Paul Railway Company in its roads .. $538,117 88

Add the amount of the stock purchased and built by the Milwaukee and St. Paul Railway Company, amounting at the same valuation as the other stock shown by Exhibit No. 7 to ..... 412,378 14

And this amount ..... 950,496 02

is the aggregate value of rolling stock in use on the roads of the Milwaukee and St. Paul Railway Company from September 1st, 1864, to February 28th, 1865, of this amount of stock ..... 607,096 88

Less the amount of stock purchased by the receiver and supposed to have been retained and used on the eastern division, viz ..... 121,178 00

That is to say ..... 485,918 88

belonged to the eastern division, and such proportion of the entire cost of mileage of the rolling stock on the roads of the Milwaukee and St. Paul company from September 1st, 1864, to February 28th, 1865, as this amount leaves to the whole amount of rolling stock in use on the roads of the Milwaukee and St. Paul Railway Company during the period of time mentioned, should be charged to the Milwaukee and St. Paul Railway Company for the use of rolling stock belonging to the eastern division, in addition to the sum charged to said company in the account as stated in schedule second annexed to my former report.

And I have ascertained and report that the amount which should be so charged to the Milwaukee and St. Paul Railway Company for the use of rolling stock belonging to the eastern division from

168 September 1st. 1864, to Feb. 28th, 1865, is eighty-six thousand and four hundred and sixty-six dollars and fifty-four cents, ($86,466 54.) and this sum should be added to the balance of the account against said company, as shown by schedule second annexed to my former report.

And I further report that if it shall be ascertained that 52½ per cent. of the stock acquired by the receiver and the stock on the road when the receiver took possession was taken by the Milwaukee and

St. Paul Railway Company, and used upon its roads after September 1st, 1864, leaving only 47½ per cent. of the stock acquired by the receiver on the eastern division, or if it shall be deemed more equitable to assume that such was the fact, then to adopt the theory upon which I have astertained the amount chargeable to the Milwaukee and St. Paul Company as above stated, the following results will be attained: Whole value of use of rolling stock on the roads of the Milwaukee and St. Paul Railway Company from 1st of September, 1864, to 28th February, 1865, as above stated, $169,139 44, whole value of rolling stock in use on the roads of the Milwaukee and St. Paul Railway Company from Setember 1st, 1864, to Feb. 28th, 1865, $1,001,380 67.

Amount of the same belonging to the eastern division, $536,803 53.

Amount chargeable to the Milwaukee and St. Paul Railway Company for the use of rolling stock belonging to the eastern division from the 1st of September, 1864, to the 28th February, 1865, both inclusive upon this basis, ninety thousand six hundred and sixty-seven dollars and thirty-one cents, ($90,667 31.)

H. L. PALMER.

July 13, 1865.

169 *Exhibit No. 5.*

Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

The exceptions of the Milwaukee and St. Paul Railway Company to the report of Henry L. Palmer, auditor, to the 12th special exception filed on behalf of the Milwaukee and Minnesota Railroad Company to the former report of said auditor filed July 14, 1865:

First. The Milwaukee and St. Paul Railway Company excepts to so much of said report as charged said company for the use of rolling stock belonging to the eastern division on the Milwaukee and St. Paul railway from September first, 1864, to February 28th, 1865, the sum of $86,466 50, whereas said auditor should have reported that no part of the rolling stock belonging to the eastern division was used on the road of the Milwaukee and St. Paul Railway Company from and after the first day of September, 1864.

Second. The Milwaukee and St. Paul Railway Company excepts to so much of said report as finds upon a certain hypothesis which is not found to exist, said company should be charged for the use of rolling stock used on its road belonging to the eastern division from the 1st day of September, 1864, to the last day of February, 1865, both inclusive, the sum of $90,667 31, whereas said auditor should have found and reported that no part of the rolling stock belonging to said

eastern division was used on the road of the Milwaukee and St. Paul Railway Company between the dates specified.

Third. The Milwaukee and St. Paul Railway Company excepts to the report of said auditor, for the reason that it is alternative, hypothetical, and indefinite.

JOHN W. CARY,
*Solicitor for M. and St. P. R. W. Co.*

170 *Exhibit No. 6.*

JAMES E. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company, the Milwaukee and Minnesota Railroad Company, and others.

This day, this cause came on to be heard upon the bill taken as confessed against the defendants, the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, Edward H. Broadhead, Joshua Hathoway, D. C. Freeman, E. Bradford Greenleaf, Thomas Turton, John Sercomb, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Edwin Townsend, Charles Quentin, John H. Tesch, Byron Kilbourn, the Juneau Bank, Cicero Comstock, George M. Chapman, and Moses M. Davis, for their having failed to plead, answer, or demur thereto, and upon the bill and answers of the defendants, Selah Chamberlain, Sebre Howard, Lawrence G. Graham, Donald D. Scott, A. Fleming, and John S. Rockwell, in the name of the Milwaukee and Minnesota Railroad Company, Edwin C. Litchfield and Ephraim Mariner, and the replication thereto, and the pleading and proof, and upon the report of the masters herein filed, and on reading the mandate from the Supreme Court of the United States, and on reading the report of Jerome R. Brigham, special master, showing the amount of interest due to the complainant on the first day of March, A. D. 1864, to be the sum of four hundred thousand dollars, less the sum of thirty-four thousand seven hundred and ninety-five one-hundredths dollars, received by complainants, and that the said instalments of interest are for forty thousand dollars each, and that the same are due and payable on the first days of March and September in each year; and on motion of Thomas L. Ogden, solicitor for complainant, it is ordered and adjudged and decreed that the sum of four hundred and five thousand two hundred and ninety-five one-hundredths dollars ($405,290 05) interest, was due and unpaid upon the bonds described
171 in the bill of complaint in this action on the 1st day of September, A. D. 1864, and that the same now remains due and unpaid.

And it is further ordered, adjudged, and decreed that unless the said sum of four hundred and forty thousand dollars are fully paid at or before the expiration of one year from the date of this decree, that the usual order will be made for the sale of the mortgaged premises described and set forth in the bill of complaint and in the mortgage.

And it is further ordered and adjudged that after the expiration of the said year, the complainant shall be at liberty when further instalments of interest shall be due and remain unpaid, to apply for an order for the sale of the said mortgaged premises, as by direction of and in accordance with the mandate of the Supreme Court.

And it is further ordered, adjudged, and decreed that all moneys in the hands of the receiver, or other persons, applicable to the payment of the interest specified in this decree, be paid on this decree, so far as necessary to satisfy the amount now due or which may be due at time of such payment.

And it is further ordered, adjudged, and decreed that any of the parties to this suit whose rights are not herein and hereby expressly determined and adjudged upon, shall be at liberty to apply to the court at the foot of this decree for such other or further relief as they may be entitled to, and consistent with the rules and practice of this court, and as may be agreeable to equity.

SAM. F. MILLER,
A. G. MILLER.

172 *Exhibits No. 7 and 8.*

Orders of the United States circuit court for the district of Wisconsin, executing the mandate of the Supreme Court of the United States, directing that the rolling stock of the late La Crosse & Milwaukee railroad, and the eastern division of said road, be delivered to the Milwaukee & Minnesota Railroad Company.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file, and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this eighteenth day of July, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the ninetieth.

[SEAL.] A. SCOTT SLOAN, *Clerk.*

[Stamp.]

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, begun
173 and held according to law, on the second Monday of April, A. D. 1865, at the city of Milwaukee, in said district of Wisconsin, present and presiding Hon. Samuel F. Miller, associate justice of the Supreme Court of the United States assigned to said circuit, and the Hon. Andrew G. Miller, district judge.

On the twentieth day of the term, to wit, on the eighteenth day of July, A. D. 1865, the following proceedings were had, to wit:

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD Company and others.

On motion of Matt. H. Carpenter, solicitor of the Milwaukee & Minnesota Railroad Company, one of the defendants in this cause, and on the mandate of the Supreme Court of the United States in this cause:

Ordered that the whole amount due the complainants in this cause, and to become due before the day of sale of the mortgaged premises, are estimated, as now appears, to be as follows, viz:

Amount fixed by order or decree nisi, $405,290 05, together with interest thereon since September 27, 1864. Coupons due March 1, 1865, $40,000, with interest thereon since that date. Coupons to become due September 1, 1865, $40,000, with interest thereon from that date. Expenses, counsel fee, etc., allowed at $35,796 33, with interest thereon from this day.

Ordered further, that in case said Milwaukee & Minnesota Railroad Company shall, before a sale of the mortgaged premises in this cause, pay to the clerk of this court for the complainant in this cause the several sums above mentioned, with interest thereon as aforesaid to the day of such payment, and the costs in this cause to be taxed; that upon such payment the said receiver, Hans Crocker, and the said Milwaukee & St. Paul Railway Company, its officers, directors, agents, and employees, deliver over to said Milwaukee & Minnesota Railroad Company, the eastern division, so called, of the La Crosse & Milwaukee railroad, so called, from Milwaukee to Portage, together with all the rolling stock that was on the whole of the La Crosse & Milwaukee railroad, or belonged or appertained thereto when the said receiver was appointed, except forty box cars numbered as follows, viz: 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, and also deliver to said Milwaukee & Minnesota Railroad Company such proportion of the rolling stock that was purchased by the receiver as
174 121,178 dollars bears to 26,199 dollars, together with all the rights, privileges, and franchises, and personal and other property belonging or in any wise appertaining to said railroad from Milwaukee to Portage, and that the said receiver be thereafter dismissed and discharged except for the purpose of passing his accounts.

Ordered further, that before the Milwaukee & Minnesota Railroad Company shall be allowed and permitted to enter into possession as aforesaid, it shall make, execute, and file with the clerk of this court a bond to the United States, in the penal sum of twenty-five thousand dollars, with sufficient surety, to pay to Sebre Howard and Selah Chamlain, or the owners of said judgments or either of them, all such sums as may come into the hands of said company, which shall hereafter be found to be rightly applicable to the payment of their claims, if they

should be established as liens upon said road. And that said company execute its bond to Hans Crocker, in the sum of twenty thousand dollars, with sufficient surety to indemnify him for contingent liability mentioned in the report of the auditor in this cause. Ordered further, that said Howard or Chamberlain may, at any time hereafter, apply to the court for an additional bond if the circumstances of the case shall require it, both of said bonds hereinbefore mentioned to be approved by the clerk of this court. Ordered further, that if the said Milwaukee & St. Paul Railway Company shall pay over the sum in its hands or any part thereof, as this day ordered, the said Milwaukee & Minnesota Railroad Company shall only be required to pay the clerk of this court the balance of the amount so due said complainant at the date of payment by said last-named company, over such sum so paid by said Milwaukee & St. Paul Railway Company, and said Milwaukee & Minnesota Railroad Company shall be entitled to possession as hereinbefore mentioned, upon payment of such balance, and giving bonds as hereinbefore ordered.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file, and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this nineteenth day of July, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the ninetieth.

[SEAL.] A. SCOTT SLOAN, *Clerk.*

[Stamp.

At at stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, begun and held according to law, on the second Monday of April, A. D. 1865,
175 at the city of Milwaukee, in said district of Wisconsin; present and presiding the Hon. Samuel F. Miller, associate justice of the Supreme Court of the United States; the Hon. Andrew G. Miller, district judge. On the twentieth day of the term, to-wit, on the eighteenth day of July, A. D. 1865, the following proceedings were had, to wit:

JAMES T. SOUTTER, survivor, &c., *vs.* THE LA CROSSE AND MILWAUKEE Railroad Company *et al.* } In equity.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

This day this cause came on to be heard upon the exceptions filed on behalf of the Milwaukee and St. Paul Railway Company to the report of H. L. Palmer, auditor, made on the references to him by order of the 28th April, 1864, and October 8th, 1864, concerning the accounts of the receiver and the Milwaukee and St. Paul Rail-

way Company; and also on the exceptions of the Milwaukee and Minnesota Railroad Company and Hans Crocker, receiver, to said report.

And the court, having heard the argument of John W. Cary, counsel for the Milwaukee and St. Paul Railway Company, and M. H. Carpenter, counsel for the Milwaukee and Minnesota Railroad Company, and James S. Brown, counsel for Hans Crocker, receiver, it is ordered that the first, second, and third exceptions of the Milwaukee and St. Paul Railway Company be overruled, and that the fourth and fifth exceptions of said company be sustained; and as to the said fourth and fifth exceptions the court finds that the auditor's report be so modified as to charge the said company with only the proportion of supplies on hand except wood, which the eastern division bears to the western division in length of road, namely, 95 miles to 105 miles. And the exceptions of said company to the supplemental report of said auditor, filed 14th July, 1865, are also overruled. The exceptions of Hans Crocker to said auditor's report are overruled. And as to the exceptions of the Milwaukee and Minnesota Railroad Company to said auditor's report in chief, the first, second, third, fourth, fifth, sixth, seventh, ninth, and tenth, (1, 2, 3, 4, 5, 6, 7, 9, and 10,) of said exceptions are overruled; that the sixth exception of the Milwaukee and Minnesota Railroad Company be overruled without prejudice to the right of that company to proceed against the said Hans Crocker, receiver, for contempt of court for misfeasance or malfeasance as receiver, and without prejudice to any proceeding against said receiver for damages for misfeasance or malfeasance as receiver, and the eighth (8) of said exceptions is
176 sustained. The 11th of said exceptions having been amended by filing a twelfth exception, which was referred to said auditor, and on which he made a supplementary report, is overruled, and the same confirmed as to the charge of $86,466 54 dollars.

It further appearing that the said Milwaukee and St. Paul Railway Company had, since the *the* 28th day of February, 1865, paid to the receiver the sum of 48,000 dollars on account of the matters so audited up to that date, said sum is hereby allowed as a credit on the sum found by the auditor to be in their hands, payable to the receiver. And the court, correcting the auditor's report in the particulars above mentioned, finds that there is now in the hands of the Milwaukee and St. Paul Railway Company, as money due and payable to Hans Crocker as receiver of the eastern division of the La Crosse and Milwaukee railroad, the sum of (364,188 58-100 dollars) three hundred and sixty-four thousand one hnndred and eighty-eight and 58-100 dollars.

And it appearing to the court that the cash balance due to said receiver is the sum of $12,681 69, and that there is due to the complainant for the expenses of this suit the sum of $35,796 34, together the sum of $48,478 03.

Now, upon consideration this court doth order that the Milwaukee and St. Paul Railway Company, on or before the 1st day of September, 1865, do pay in cash to said receiver the sum of $12,681 69; and in cash to said receiver for said James T. Soutter, trustee, by

the same day, the sum of $35,796 34; and that, upon making said payment of $48,478 03, the same be credited upon said indebtedness of $364,188 58.

And it is further ordered that the said Milwaukee and St. Paul Railway Company, on or before the first day of September, 1865, pay to Hans Crocker, receiver, the further sum of three hundred and fifteen thousand seven hundred and ten dollars and fifty-three cents; and that, in making said last payment, if made by the 1st of September, 1865, said Milwaukee and St. Paul Railway Company may pay to the receiver in past due coupons for interest on the bonds secured by the mortgage in this cause in such amount as the holders of such coupons would be entitled to on their said coupons if the whole amount thereof was paid in cash.

177 *Exhibit No.* 9.

Circuit court of the United States, district of Wisconsin.

At a regular term of the circuit court of the United States for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in the said district of Wisconsin, on the second Monday of September, 1865.

Present: Hon. S. F. Miller, circuit judge, and Hon. A. G. Miller, district judge, on the twenty-eighth day of September, A. D. 1865.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wellmor, Edward H. Broadhead, Newcomb Cleveland, William Gemmell, Joshua Hathoway, James Walstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mewry, Henry K. Eastman, Henry L. Simonds, De Witt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Huetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, the Mercantile Bank of Hartford, Conn., August Lanthof, Charles Quentin, John H. Tesch, Byron Kilbourn, Nathaniel S. Bouton, the Juneau Bank, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, Cicero Comstock, George W. Chapman, Moses M. Davis, Charles Howard, and Henry Vallette.

On reading and filing the petition of the complainant, dated Sep-

tember 28th, 1865, in this suit, and on reading the decree made by this court on the 27th day of September, A. D. 1864, and it appearing to the court that the principal sum secured by the bonds
178 and mortgage set forth in the complaint is one million dollars; that the amount found due for interest by the said decree remains unpaid except the sum of sixty-two thousand four hundred and forty dollars paid by the receiver, leaving due at this date, with interest, the sum of three hundred and seventy-two thousand one hundred and one 87-100 dollars, and that two instalments of interest have become due and payable since the said decree, amount, with interest, to the sum of eighty-one thousand eight hundred and thirty-five 52-100 dollars, and, on motion of Thomas L. Ogden, solicitor for the complainant, it is ordered, adjudged, and decreed, and this court doth hereby order and decree, that all and singular the mortgaged premises mentioned in the bill of complaint in this cause and hereinafter described, or so much thereof as may be sufficient to raise the amount owing to the complainant for the several bondholders for principal, interest, and costs in this cause be sold at public auction, under the direction of the marshal of this district; and it is further ordered that the said sale be made at the post office in the city of Milwaukee, within this district, where the said premises are situated, and that the said marshal give public notice of the time and place of such sale by advertisement published in some newspaper printed in said city, and in two newspapers printed in the city of New York, at least once in each week for twelve successive weeks previous to the day of sale, and that said complainants, or any of the parties to this cause, may become the purchaser thereof, and that said marshal execute a deed or deeds to the said purchaser or purchasers of said mortgaged premises, and that the said marshal pay to the complainant or his solicitor out of the proceeds of such sale their costs in this cause to be taxed, and which have not already been paid.

And it is further ordered, adjudged, and decreed that the defendants, and all persons claiming or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part and parcel thereof when said sale shall be confirmed.

179 And it is further ordered, adjudged, and decreed that the purchaser or purchasers of said mortgaged premises at such sale be let into the possession thereof, and that any of the parties to this cause who may be in possession of the premises, or any part thereof, and any person who, since the commencement of this suit, has come into possession under them, or either of them, deliver possession thereof to such purchaser or purchasers on production of the deed of said premises, and a certified copy of the order confirming the report of sale.

And it is further ordered, adjudged, and decreed that the purchaser or purchasers at such sale may pay therefor in the bonds and coupons of the La Crosse and Milwaukee Railroad Company, included in this decree, in proportion as the amount bid bears to the whole sum

secured by the mortgage after payment of costs and expenses of sale, and that the marshal report to the court the bonds secured by the said mortgage, and the coupons of such bonds by their amounts and numbers respectively not presented or paid to him in or towards the purchase of the said mortgaged premises, and also the share and amount of the purchase money of the mortgaged premises applicable to the payment of the bonds and coupons last mentioned.

And it is further ordered and decreed that in case of a sale of the mortgaged premises under this decree, the proceeds shall be applied to the balance of the interest due, and if such proceeds shall exceed such balance, the same shall be applied to the future accruing interest down to the date of such sale, and if the proceeds exceed such balance the same shall be applied to the principal of the bonds, in case the bondholders assent, or pro rata to those who may assent and any remaining balance of the said proceeds be invested under the directions of the court for the payment of future accruing interest and ultimately for the principal.

And it is further ordered and decreed that the receiver now in possession of the mortgaged premises upon sale and confirmation thereof be discharged, except as to passing his accounts. The description of the property authorized to be sold under and by virtue of this order is as follows, viz:

All and singular the railroad of said company commencing in the city of Milwaukee, and running thence to Portage City, a
180 distance of ninety-five miles, which road has been constructed and is now in full operation, and also the railroad of said company (as well that part which has been constructed as that part which remains to be constructed) from Watertown by way of Columbus to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one-half of which last mentioned road being the part between Watertown and Columbus was constructed at the time of the execution of the said mortgage, and was then in full operation, including all and singular the several tracts, pieces, or parcels of land which then did or might thereafter constitute the site of the roadway, turnouts, engine houses, work shops, depots, and other buildings, and all other land and real estate which then constituted or might thereafter constitute or be a part of or appertain to said railroads, or either of them, and also all and singular the superstructure of said railroads, whether then made or made thereafter, and all the engine houses, work shops, depots, and other buildings, and all the other improvements on or appurtenant to said railroads, or either of them, whether then made or built, or thereafter built or made; and also all and singular the locomotive engines, cars, and rolling stock, and all the materials, tools, implements, and utensils, and other personal property which had been procured for or used in connection with said roads, or either of them, prior to the appointment of Hans Crocker as receiver of said road, except forty box cars numbered respectively 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392,

394, 396, 398, 400, 402, 404, 406, and 408, and including as part of said mortgaged premises such proportion of the rolling stock bought by the receiver since his appointment as the net earnings of the eastern division of said railroad bear to the earnings of the western division as ascertained by the report of H. L. Palmer, and as confirmed by the court; and also all and singular the rights, liberties, and franchises of said railroad company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown by way of Columbus to Midland aforesaid, and all the property,
181 real and personal, and all the rights, liberties, privileges, and franchises of said railroad company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown by way of Columbus to Midland.

It is further ordered that the marshal sell all the other property mentioned in this decree first and before he sells the railroad from Watertown by way of Columbus to Midland, and that this shall not be sold if that which is first sold shall bring a sufficient sum to satisfy the debt, interest, and costs mentioned in this decree.

It is further ordered and decreed that this decree shall not prejudice the right of the Milwaukee & Minnesota Railroad Company under the order of the court in this cause, made on the 18th day of July, A. D. 1865, providing for the entry of said company into possession of the said mortgaged premises on certain terms and conditions fixed by said order, and the said Milwaukee & Minnesota Railroad Company shall be at liberty to avail itself of the provisions of the said order, notwithstanding this decree, at any time before the sale of said mortgaged premises in this cause.

SAM. F. MILLER,
A. G. MILLER.

182 *Exhibit No.* 10.

Appeal from the circuit court of the United States for the district of Wisconsin.

Supreme Court United States.—December term, 1864.

THE MILWAUKEE AND MINNESOTA RAILROAD Company, appellants,
*vs.*
JAMES T. SOUTTER, survivor, &c.
} No. 279.

Mr. Justice Miller delivered the opinion of the court:

In the circuit court a demurrer was sustained to the bill, and the bill dismissed, from which decree the present appeal was taken.

The first question raised by the demurrer relates to the jurisdiction of the federal courts over the case. The complainant in the present bill is a corporation organized under the laws of Wisconsin, and located in that State. The Milwaukee and St. Paul Railway Company, one of the defendants, is in like manner a corporation of that State; and Pratt and White, two other defendants, are also citizens of Wisconsin.

It being obvious that the suit cannot be maintained on the ground of citizenship of the parties, the appellant relies upon the sub-
183 ject-matter of his bill to bring the case within the jurisdiction of the courts. The main facts on which the jurisdiction must depend, as set forth in the bill, may be stated thus:

The present defendants, James T. Soutter and Shepherd Knapp, together with Greene C. Bronson, who is since dead, were trustees and grantees in a mortgage made by the La Crosse and Milwaukee Railroad Company on that part of their road between Portage City and the Mississippi river, and on the rolling stock and other appurtenances properly belonging to that division of said road. The same company shortly afterwards made to William Barnes a mortgage on all their road from La Crosse to Milwaukee, and on all the rolling stock belonging to said company, including both the eastern and western divisions of the road. This latter mortgage was foreclosed by a statutory proceeding, and the Milwaukee and Minnesota Railroad Company became the purchaser and owner of the equity of redemption of all the road, rolling stock, and franchises of the La Crosse and Milwaukee Railroad Company. Shortly after this Bronson, Soutter & Knapp, trustees in the mortgage of the western division, filed their bill in chancery in the district court of the United States for the district of Wisconsin to foreclose their mortgage, and had a decree, under which the western division was sold, and also all the rolling stock of the company belonging to both divisions of the road to the Milwaukee and St. Paul Railway Company.

The Milwaukee and Minnesota company was made defendant in that suit, but did not answer. The district court confirmed the sale of the marshal, and delivered to the Milwaukee and St. Paul company all said stock, and that company now has possession of it under the order of the district court.

It is alleged in the bill in the present suit that the mortgage to Bronson, Soutter & Knapp did not cover a large part of this rolling stock, over half a million dollars in value; that the decree of the court did not order it to be sold, and that the district court only placed it in possession of the Milwaukee and St. Paul Railway Company, as it did the eastern division of the road, for the purpose of enabling that company to run the road from Milwaukee to La Crosse as one road; that notwithstanding this, the Milwaukee and
184 St. Paul Company claim to own all the rolling stock of the road, and are now carrying it to other and rival roads, which they own, and using it to the prejudice of complainant, and to the destruction of the interests of the eastern division of the road.

For the purposes of this question we are to take all the facts thus set up to be true, and consider whether they make a case for the jurisdiction of the circuit court of the district of Wisconsin, which has become the successor of the district court in that district.

The present suit grows immediately out of and is a necessity which arises from the foreclosure suit, and is really a continuation of it. The rights of the parties depend upon the construction which is placed upon the acts of the court in that suit, and the present bill is

necessary in order to have a declaration of what was intended by the orders and decrees made in that suit, and to enforce the rights which were established by it.

The road and rolling stock, which are the subject-matter of this controversy, were placed in the hands of a receiver in the progress of that suit, and he was in possession of the rolling stock when, by an order of the district court made June 12th, 1863, in that suit, and a similar order of the same date in another suit, it was all delivered to the Milwaukee and St. Paul Railway Company.

At the last term of this court, in the case of Bronson *vs.* La Crosse Railroad Company, (1 Wallace, 405,) we decided that by the act creating the circuit court for the district of Wisconsin the district court lost its power to make such orders, and that they were void. The consequence of this ruling is, that in contemplation of law this property is still in the hands of the receiver of the court.

If in the hands of the receiver of the circuit court, nothing can be plainer than that any litigation for its possession must take place in that court, without regard to the citizenship of the parties.—(Freeman *vs.* Howe, 24 Howard, 460.) If it has been taken illegally from the custody of the receiver, it is equally clear that the court has not lost thereby the jurisdiction over the property, or the right to determine where it shall go, so far as that right is involved in that suit. This is the very object of this bill, and it is rendered all the more
185 necessary by that which the court has done, as well as that which it has failed to do.

In the case of Randall *vs.* Howard, (2 Black., 585,) these principles are fully stated as applicable to a proceeding in a State court, and are given as reasons why the federal court would not interfere, although the parties had the right, so far as citizenship could give it, to litigate in the courts of the United States.

It is objected that the present bill is called a supplemental bill, and is brought by a defendant in the original suit, which is said to be a violation of the rules of equity pleading, and that the subject-matter and the new parties made by the bill are not such as can properly be brought before the court by that class of bills.

We think that all the exhaustive research brought to bear on this technical question of equity pleading, while creditable to the counsel on both sides, is useless in the present case. It is not a question whether the proceeding is supplemental and ancillary, or is independent and original, in the sense of the rules of equity pleading; but whether it is supplemental and ancillary, or is to be considered entirely new and original, in the sense which this court has sanctioned, with reference to the line which divides the jurisdiction of the federal courts from that of the State courts.

No one, for instance, would hesitate to say that according to the English chancery practice a bill to enjoin a judgment at law is an original bill, in the chancery sense of the word; yet this court has decided many times that when a bill is filed in the circuit court to enjoin a judgment of that court, it is not to be considered as an original bill, but as a continuation of the proceeding at law; so much

so, that the court will proceed in the injunction suit without actual service of subpœna on the defendant, and though he be a citizen of another State, if he were a party to the judgment at law.

The case before us is analogous. An unjust advantage has been obtained by one party over another by a perversion and abuse of the orders of the court, and the party injured comes now to the same court to have this abuse corrected, and to carry into effect the real intention and decree of the court, and that while the property which is the subject of contest is still within the control of the court and subject to its order.

186 It is objected that Pratt and White and the Milwaukee and St. Paul Railway Company were not parties to that suit, and cannot, therefore, be compelled to yield their right to litigate with a citizen of Wisconsin in the courts of that State.

Pratt and White are mere nominal parties, who were the agents and attorneys of the corporators composing the Milwaukee and St. Paul Railway Company, and purchased the property at the marshal's sale for them. They and the company may both be considered as purchasers at that sale, and it is in their character of purchasers, and on account of the possession which they obtained on petition of the company, and the rights they claim under that purchase, that they are now brought before the court. If the court has jurisdiction of the matters growing out of that sale, and order of possession, as we have already shown that it has, then it has jurisdiction to that extent of the parties, without regard to their citizenship. It would, indeed, be very strange if these parties can come into court by a petition, and get possession of that which was the subject of litigation, and then when the wrong they have done by that proceeding is to be corrected, they shall be permitted to escape by denying that they were parties to the suit.

In the case of Blossom *vs.* The Milwaukee and Chicago Railroad Company, 1 Wallace, 665, this matter was fully discussed, and it was there held that a purchaser or bidder at master's sale subjected himself quoad hoc to the jurisdiction of the courts, and became so far a party to that suit by the mere act of making a bid, that he could appeal from any subsequent order of the court affecting his interest.

De la Plaine *vs.* Lawrence, 10 Paige, 602; Calvert on parties to suits in equity, pages 51, 58, and note to page 61.

The objection to the jurisdiction must therefore be overruled.

We next proceed to inquire whether the bill makes a case calling for relief.

This involves the consideration of the mortgage of complainants in the original suit, and of several orders and decrees of the district court, all of which are the subject of conflicting constructions by the parties and their counsel

187 A preliminary statement of a few facts may assist us in the solution of these difficulties.

The La Crosse and Milwaukee Railroad Company was chartered originally to build a road from Milwaukee to La Crosse, and commenced the work at Milwaukee, proceeding westward. The legisla-

ture of Wisconsin added the right to build other roads connecting with this, and also gave them the right to mortgage any particular division of their road separately for the purpose of raising money. Under this later provision of the statute, the company appears to have divided the main road into two divisions, nearly equal in length, the eastern division extending from Milwaukee to Portage City, ninety-five miles, and the western division from Portage to La Crosse, one hundred and five miles.

On the 30th June, 1854, the company made and delivered to Francis A. Palmer, as trustee, a mortgage on the eastern division, commonly called its first mortgage, for $900,000; on the 31st December, 1856, it made a mortgage to Bronson, Soutter, and Knapp, trustees, which is the foundation of the original suit in this case, for several millions dollars, covering the western division, commonly called the land grant mortgage; and on the 17th August, 1857, it made to Greene C. Bronson and James T. Soutter, trustees, a second mortgage on the eastern division for $1,000,000.

We have already seen that after all these, the company made the Barnes mortgage which was first foreclosed, under which complainant in this bill became by purchase owner of the equity of redemption of all the road, its franchises, rolling stock, and realty.

In reference to the road bed which is covered by these various mortgages, there is no diversity of opinion; but in reference to the rolling stock, it is contended by the appellees that these several mortgages were successive liens on all the rolling stock of the company, and by appellant that they are liens only on the rolling stock belonging to, or in some way identified with, that part of the road included in each mortgage respectively. At first blush it would seem that in a road used continuously as one road, there could be no such definite
188 relation between any particular division of the road, and any particular portion of the stock. But as it was competent for the company which owned all the road, and all the stock, to assign certain stock to one division, and certain stock to the other division, when the roads were divided for the purpose of making mortgages, we cannot assume as a fact that there was no such division of the rolling stock; but must look to the language of the mortgages themselves, to see if any such intention is expressed. If it is not, then obviously the other view prevails, and the mortgages are successive liens on the whole stock.

The descriptive part of the Palmer mortgage is in the following words:

"All their said road, from its eastern terminus, in the city of Milwaukee to Portage City, in the county of Columbia, being ninety-five miles in distance, constructed and to be constructed, together with all and singular the railways, land procured or occupied, or so to be, for right of way within the limits aforesaid, together with bridges, fences, privileges, rights, and real estate owned by said company for the purposes of said road, or which may hereafter be acquired or owned by them within the limits aforesaid, and all the tolls, income, issues, and profits to be had from the and all lands used for and occu-

pied within the limits aforesaid by depots and stations, with all buildings standing thereon or which shall be procured therefor, together with all locomotives, engines, and tenders, passenger cars and freight cars, shop tools and machinery, now owned or hereafter to be acquired by said company, and in any way belonging or appertaining to said railroad, now constructed or to be constructed within the limits aforesaid, including all its property, real and personal, pertaining to said railroad within said limits, and all its rights, credits, and franchises thereunto appertaining."

The corresponding part of the mortgage on the western division is as follows:

"All and singular the several tracts, pieces, or parcels of land which are now, or may hereafter be, or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, 189 whether now built and made or to be built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all other equipments of every kind and description, which have already been, or may hereafter be, procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property, which have been or may hereafter be procured for or used in connection with said roads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company, of every kind and description, relating to said roads."

The language thus quoted has been the subject of much minute criticism on both sides, and when considered in reference to the rolling stock above, may not be free from doubt as to its construction. But when we consider it in reference to the clear purpose of the parties to make the mortgages distinct and different as to every thing else conveyed by them, we conclude that it was intended that the rolling stock covered by each mortgage was that which was properly appurtenant to each particular division of the road.

It is not so important that we be right in this, however, as we are satisfied that the district court in the foreclosure suit decided this question, and as that decision is in full force and unreversed, it must conclude the parties to the present suit, all of whom claim under the decree of the court.

The complainants in the original foreclosure suit made defendants of all the judgment creditors of the company, who had liens subsequent to themselves, and made the Milwaukee and Minnesota company defendant who held under the subsequent mortgage to Barnes, with a view to cut off their equity of redemption; but they did not make defendants of Bronson and Soutter who held a subsequent mortgage on the eastern division, and a subsequent lien on the rolling stock, which complainants would also desire to extinquish, if they had believed it covered the same rolling stock which their's did. By omitting these mortgagees, they show their own construction that their mortgage, and that of Bronson and Soutter, did not cover the same stock, which could only be because it was appurtenant to the eastern division.

190 About the time that foreclosure suit was commenced, a suit was instituted in the same court to foreclose the second or Bronson and Soutter mortgage on the eastern division, but the holders of the Palmer mortgage were not made defendants to either suit. They progressed pari passu to a final decree; but while the western division went to sale, an appeal stayed proceedings in the eastern division case, and no sale has yet been made under that decree. Very shortly after these suits were commenced, the court made an order of reference in each of them to masters in chancery, who were the same masters in both cases. These references were for the purpose of ascertaining the amounts due on the bonds, the amounts due certain judgment creditors, and the amount of rolling stock on the whole road, and the amount included in each mortgage. The language of the order of reference on this latter point in the original suit in this case is as follows: "And it is further ordered that said masters ascertain and report the whole amount of rolling stock on the road, and that they specify the quantity thereof that is covered by this mortgage, also in the first and second mortgages respectively." The reference in the other case is in language almost identical with this.

Now it is claimed that the object of this order was to ascertain and settle the priorities between these different mortgages. No such inference can be made from its language, for it says nothing about priorities in date, or superiority of lien. There was no occasion or reason for ascertaining those priorities in that suit, for the respective parties were not before the court and could not be bound by its decree. It would not even bind complainants, because there could be no mutuality in the estoppel. It is an impeachment of the legal attainments of the court and of the counsel to suppose that they would make a reference to a master to ascertain a fact which could have no influence on the suit, and if passed over by the court, could affect nobody's interest in the slightest degree.

But the language of the order clearly implies a very different thing. The object manifestly is to ascertain what is covered by one mortgage to the exclusion of the other; an object which had manifest pertinency to the duty which the court was called upon to discharge.

191 The judge who made these orders delivered an opinion at the trial, in which he decides that the rolling stock of a railroad is a fixture; and if we suppose him to have considered that which was mortgaged to Palmer and to Bronson and Soutter as a fixture on the eastern division, and that which was mortgaged to Bronson, Soutter, and Knapp as a fixture in the western division, we have a clear idea of what he wished to ascertain, in view of the decrees he was to make in the two suits.

We have next the report of the master on this subject, which is in the following words:

"We have also ascertained the whole amount of rolling stock on the whole road at the cost price. The amount thereof was, at the date of the filing of the bill of complaint in this cause, five hundred sixty-nine thousand six hundred thirty-five dollars and seventy-eight cents, and an additional amount of fifty-three thousand six hundred

dollars has been purchased since the filing of the bill of complaint, making the whole amount $623,235 78.

"And we have ascertained, and do further report, that of the said rolling stock forty box cars, amounting, at the cost price thereof, to thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, are covered by and included in the mortgage executed to the complainants, as set forth in the bill of complaint in this cause, the said cars having been purchased, and by the proceeds of a portion of the bonds to which this mortgage is collateral; and all the remainder of the said rolling stock is covered by and included in the first mortgage upon the said railroad, executed to Greene C. Bronson and James T. Soutter, and bearing date on the seventeenth day of August, A. D. 1857.

In the foreclosure suit of the eastern division, the same masters reported on the same day: that "we have ascertained, and do further report, that of said rolling stock forty box cars, amounting at cost price thereof to $31,779 64, and numbered 330 and so on, are covered by and included in the mortgage of Greene C. Bronson,
192 James T. Soutter, and Shepherd Knapp, and no other;" and then adds that the remaining rolling stock is covered by the mortgage to Palmer, and to Bronson and Soutter; that is, the mortgage on the eastern division.

It is impossible in examining these reports to doubt that the commissioners understood that they were directed to ascertain what rolling stock was covered by each mortgage, in order that only such might be sold under the decree in that case, and that they reported that of all the rolling stock on the road, forty box cars alone were subject to the mortgage in the present case, and that all the other stock was subject to the mortgage in the other suit. At all events they were directed to ascertain what was subject to the mortgage in this suit, and they reported the forty box cars and did not report any more. This much is beyond dispute, from the language of the report in this case.

Counsel for complainant excepted to this report. His fourth exception is that instead of certifying as they did, the masters should have reported, "that all the rolling stock on said road was covered by and included in the mortgage given to said complainants, and described in their bill of complaint in this cause, and that said mortgage was a first and prior lien on said rolling stock, superior to all other liens." This exception was overruled by the court, and the report of the masters confirmed, so far as this branch of the subject is concerned.

We regard this as a judicial decision that complainant's mortgage did not cover the rolling stock which was covered by the previous mortgage to Palmer, and that it only covered the forty box cars, and such proportion of the rolling stock purchased by the receiver as the net earnings of the western division bears to the net earnings of

the eastern division. This order modifying and confirming the report of the masters, settled the rights of the parties, and by that decision they must stand until it is reversed on appeal or set aside by some direct proceeding for that purpose.

The final decree ordering the sale proceeds upon the same view of the rights of the parties. After ordering a sale of the property mortgaged, and copying the language we have already recited from
193 the mortgage, as descriptive of what was mortgaged, the decree adds: "with forty box cars," (numbering them) "and such portion or share of the rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine-hundred and forty-two dollars and sixty-three cents, as the net revenues of the portion of the road covered by this mortgage bears to the balance or other end of the road since the appointment of the receiver. The remaining rolling stock is subject to a prior mortgage." That is to say, having decided that what is covered by the other two mortgages, is not covered by this, it is not subject to sale in this suit.

The marshal, however, who was directed to make the sale instead of a master commissioner, did sell all the rolling stock, and that sale was confirmed by the order of the district court of May 5th, 1863.

It is too clear for argument, that a sale by the marshal, unauthorized by the decree, is without any validity. Does the order of the court confirming the sale make it valid?

Upon principle the question is by no means free from difficulty. We are clear that a sale without a decree to sustain it would be a nullity, and we doubt if a court can make it valid by a mere general order of confirmation. If, however, an issue had been made by exceptions, or other proper pleading, as to the question whether any particular piece of property had been included in the decree or order of sale, and the court had decided that it was so included, it might be an adjudication upon the construction of the decree, which would bind the parties. Nothing of the kind occurred here. There is every reason on the contrary to believe that the court had no suspicion that the marshal had sold more than the decree authorized.

On the 7th day of May, two days after the order of confirmation, the Milwaukee and St. Paul Railway Company presented their petition for the discharge of the receiver, and for possession of the property which they had purchased. The court thereupon made an order "that the receiver deliver over to said Milwaukee and St. Paul Railway
194 Company the said road and appurtenances between Portage City and La Crosse, and the rolling stock and property specially described in the decree."

The only rolling stock specially described in the decree was the forty box cars, and the proportion of stock purchased by the receiver. The fact that this was ordered to be delivered to the purchasers, and no more, is almost conclusive of two things: first, that the judge understood his decree and previous rulings as we have interpreted them; and second, that he had no idea that he had confirmed a sale of all the rolling stock on the road to purchasers at the sale.

It is true that over a month later, he ordered the eastern division of the road and the remainder of the rolling stock into the possession of the same company. But this was done to enable them to run the whole road as a through route, on the principle of public policy, and that it was better for all parties concerned.

This he declared in an opinion delivered at the time, and is substantially indicated in the orders themselves.

In the light of these facts, we cannot give to the order of confirmation in this case the effect of making valid the marshal's sale, however the rule might be on that subject in other cases. But we do not wish to intimate that in any case a sale by a marshal, or master in chancery, can be valid when there is no decree to support it. The cases of Shriver *vs.* Lynn, 2 Howard, 43 and Brignardello *vs.* Gray, 1 Wallace, 627, would seem to decide that it cannot.

The order of June 12, 1863, delivering possession of this property to the Milwaukee and St. Paul Railway Company, has been declared to be void for want of jurisdiction, and has been set aside by the court which made it. It therefore affords no support to defendants in this claim to the rolling stock in dispute.

We have thus examined with care and patience the mortgage and the various orders and decrees of the district court, on which the claims of the Milwaukee and St. Paul Railway Company to the ownership of this property depends. There is in all of them some want of clearness and precision, including the mortgage itself.

Before the court ordered the sale it should have made clear all these ambiguities.

195 It evidently attempted to do so, and we think if it has not in all cases effected that purpose fully, it has furnished the criteria by which it can be done. And although the language of its orders is not always free from doubt, we have been able to satisfy ourselves of the court's intentions.

The title of appellant is clear on the record, unless it has been divested by the proceedings. We do not think that they confer title to the rolling stock on the Milwaukee and St. Paul Railway Company, nor divest the appellant, except as to the forty box cars, and the proportion of the stock purchased by the receiver, which the net earnings of the western division bore to the net earnings of the eastern division, and that they also decide that the mortgage under which they claim did not include any more.

The order of the circuit court sustaining the demurrer to complainant's bill and the decree of the court dismissing it are therefore reversed, and the case remanded to that court for further proceedings not inconsistent with this opinion.

196 *Appeal from the circuit court of the United States for the district of Wisconsin.*

Supreme Court United States.—December term, 1864.

THE MILWAUKEE & MINNESOTA RAILROAD Company and Alexander Fleming, appellants,
*vs.*
JAMES T. SOUTTER, survivor, &c.
No. 280.

Mr. Justice Miller delivered the opinion of the court:

This case was before us at the last term, on the appeal of the present appellees, and a decree was rendered reversing the former decree of the district court, and ordering a decree in favor of the complainants, who are the present appellees, for the full amount of their claim.

The mandate from this court to the circuit court, among other directions, contained the following: "And it is further ordered that this cause be, and the same is hereby, remanded to the circuit court of the United States for the district of Wisconsin, with directions to enter a decree for all the interest due and secured by the mortgage, with costs; that the court ascertain the amount of moneys in
197 the hands of the receiver or receivers from the earnings of the road covered by the mortgage, which may be applicable to the discharge of the interests, and apply it to the same; and that if the monies thus applied is not sufficient to discharge the interest due on the 1st day of March, 1864, then to ascertain the balance remaining due at that date. And in case such balance is not paid within one year from the date of the order of the court ascertaining it, then an order shall be entered directing the sale of the mortgaged premises."

Upon the filing of the mandate in the court below, the receiver was ordered to make a report of the funds in his hands; from which it appeared that he had some $50,000 to $60,000 applicable to the payment of the interest on the bonds in suit.

The appellant insisted that instead of this small amount, there really ought to be in the receiver's hands between $300,000 and $400,000 applicable to this purpose, and asked and order of reference to a master, with instructiens to hear testimony, and ascertain and report on this claim. The court made the order, and postponed further aotion in the case, until the succeeding term in September. At that term it was ascertained that the master would be unable to report on the complicated accounts of the receiver, involving several millions of dollars; and the receiver was again ordered to report the funds actually in his hands. From this second report it appeared that he had no money properly applicable to the payment of complainant's debt, and thereupon the court proceeded to ascertain the amount of interest due on the bonds secured by complainant's mortgage, and entered a decree accordingly, giving defendant a year to pay it, before a sale of the mortgage premises.

From this decree the Milwaukee & Minnesota Railroad Company, successors in title and interest to the La Crosse and Milwaukee Railroad Company, have appealed; and the first ground assigned for the appeal is, that the decree is a departure from the mandate of the court, because it should not have been rendered until the accounts of the receiver were adjusted, and it was judicially ascertained how much of the millions he had received ought now to be applied to the payment of complainant's interest coupons.

This construction of the mandate cannot be sustained.

198 The receiver is the officer of the court, and neither party is responsible for his misfeasance or malfeasance, if any such exists, and it was not therefore reasonable that complainants should be delayed in the collection of their debts until the close of a litigation over the receiver's accounts, which might occupy several years.

The suit had already been pending four years, and the mandate required the circuit court, in its decree nisi, to give another year for the payment of the sum found due. To suppose that this court intended, in addition to these five years, to withhold the recovery of complainants for the additional uncertain period which might be necessary to liquidate the receiver's accounts, is to impute to it a manifest injustice.

The language of the mandate had reference to the sum actually in the receiver's hands, properly applicable to the payment of this debt, and not to what it might turn out on full investigation ought to be there for that purpose. This court had no reason to suppose that there would be any controversy with the receiver on the subject, and framed its mandate on the supposition that all the money for which he would be responsible would be at once forthcoming. If such is not the case, neither the loss nor the delay of ascertaining the fact was intended by this court to be imposed on the complainants. This decree of the court is therefore affirmed.

But another order was made by the circuit court of a very important nature, after the return of the case from this court and before the decree just affirmed, which appellant seeks to have reversed.

At the first term of that court after the mandate was filed, the appellant proposed to pay all the money due on complainants' mortgage, on condition that an order should be made discharging the receiver, and placing the road and its appurtenances in the possession of appellants. Upon the hearing of this petition of appellant the judges of the circuit court were divided in opinion, and the application was thereupon refused, as it was not a division upon a subject which is authorized to be certified to this court for its action.

The appellant insists that this court shall now review the

199 order of the circuit court on this subject, and while conceding that it is not such an order as, standing alone, could be the subject of an appeal, claims that as the record is properly here on appeal from the final decree, which we have just considered, the whole record is open for our inspection, and that it is our duty to correct the error of which he complains of in this particular.

There is no question but that many orders or decrees, affecting materially the rights of the parties, are made in the progress of a chancery suit which are not final in the sense of that word in its relation to appeals. The order of the court affirming or annulling a patent, and referring the case to a master for an account, is an instance. The adjudications which the court makes an exception to, reports of masters, often involving the whole matter in litigation, are not final decrees, and in these and numerous other cases if the court can only on appeal examine the final or last order or decree which gives the right of appeal, it is obvious that the entire benefit of an appeal must in many cases be lost.

The order complained of in this case seems to be one of this class. The complainants are seeking a foreclosure of a mortgage, with a view to make their debt. The owner of the equity of redemption in the mortgaged premises comes forward and offers to pay this debt, or all of it that is due, provided his property, which is in the custody of the court, shall then be restored to his possession. The right of the owner to this order is under ordinary circumstances very clear, and a refusal by the court to give him this right would seem to call for the revisory power of this court, when the whole case is before it on the record brought here by appeal from a final decree.

The only doubt which the court could have on the question arises from the principle that the appointment and discharge of receiver are ordinarily matters of discretion in the circuit court, with which this court will not interfere.

As a general rule this proposition is not denied, but we do not think it applicable to the case before us. While the parties to this suit were fiercely litigating the amount of the mortgage debt, and questions of fraud in the origin of that debt, the appointment
200 or discharge of a receiver for the mortgaged property very properly belonged to the discretion of the court in which trial litigation was pending. But when those questions had been passed upon by the circuit court, and by this court also, an appeal and the amount of the debt definitely fixed by this court, the right of the defendant to pay that sum and have a restoration of his property by discharge of the receiver, is clear, and does not depend on the discretion of the circuit court. It is a right which the party can claim, and if he shows himself entitled to it on the facts in the record, there is no discretion in the court to withhold it. A refusal is error, judicial error, which this court is bound to correct when the matter, as in this instance, is fairly before it.

That the order asked for by appellant should have been granted seems to us very clear.

It was objected by the complainants that the receiver should not be discharged, because the security of the road and its appurtenances was not sufficient to insure the payment of their debt, and therefore its receipts should be applied to that purpose through the agency of a receiver.

The amount of the complainants' debt, exclusive of the interest which appellant proposed to pay, was one million of dollars, which,

added to twelve hundred thousand dollars of prior mortgages, made the sum of two millions two hundred thousand dollars, which the road and its appurtenances should be worth to secure complainants' debt. The road-bed on which complainants' mortgage is a lien is ninety-five miles, from Milwaukee to Portage, besides the depots, rolling stock, and other appurtenances belonging to it. It constitutes a part of the direct line from the former city to the Mississippi river, which is one of the most valuable routes in the United States, both present and prospective. The gross earnings from this ninety-five miles for the year preceding the application to discharge the receiver, as shown by his reports, were about eight hundred thousand dollars; and although these reports show a great falling off in the receiver's receipts since that time, the circumstances which have produced it are not of a character to incline us to continue the road in the possession of a receiver. The road was also in good repair. The
201 decree which we have just affirmed authorizes the complainants, upon default in payment of any future instalment of interest, to apply for and have an order of sale of the road under that decree.

Under these circumstances, when appellant proposes to pay some $300,000 or $400,000 of complainants' debt before possession is given, it is idle to say that the security of their debt requires the road still to be detained from its lawful owner.

Sebre Howard objects to the discharge of a receiver, because he has a judgment of $16,000 against the La Crosse and Milwaukee Railroad Company, which he claims to be a lien on the road, and as the present receiver had also been appointed receiver in his suit, he claims that he must first be paid before he can be discharged.

The idea of appointing or continuing a receiver for the purpose of taking ninety-five miles of railroad from its lawful owners, which is earning a gross revenue of $800,000 per annum, to enforce the payment of a judgment of $16,000, the lien of which is seriously controverted, is so repugnant to all our ideas of judicial proceedings, that we cannot argue the question. If Mr. Howard has a valid judgment the usual modes of enforcing that judgment are open to him, both at law and in chancery: but the extraordinary proceedings of taking millions of dollars worth of property, of such peculiar character as railroad property is, from its rightful possessors, as one of the usual means of collecting such a comparatively small debt, can find no countenance in this court.

Selah Chamberlain objects to this discharge of the receiver, and particularly to delivering the property into possession of appellants, because he says he has a lien of over $700,000 in the road, and because that lien is secured by a lease which entitles him to the possession of the road.

Mr. Chamberlain had been in possession under his lease for some time prior to the appointment of a receiver, under a contract with the La Crosse and Milwaukee Railroad Company, by which he bound himself to keep down the interest on the various mortgage on the road, including the one on which this suit is brought. This he had

failed to do, and had actually abandoned the possession to the
202 complainants in this suit, who were in possession at the time the receiver was appointed. His judgment was assailed, and declared to be fraudulent and void by a decree of the district court of the United States. There is a question whether that decree is binding as between him and the present appellant, which we do not intend to decide here; but we refer to this fact as having strong influence on the question of the propriety of keeping the road in the hands of receiver for his benefit, or delivering it to him if the receiver is discharged.

We shall endeavor to protect his interest, whatever it may be, in any order that shall be made on the subject.

As to the Milwaukee and St. Paul Railway Company, who also resisted this application, we do not see that they have any legal interest in the matter, and the interest which prompts their interference is not such as the court can consider on an application of this kind.

In reference to all these parties we remark again, that the court deprives them of none of their rights to proceed in the courts in the ordinary mode, collect their debts, and that the appointment of receivers by a court to manage the affairs of a long line of railroad, continued through five or six years, is one of those judicial powers, the exercise of which can only be justified by the pressure of an absolute necessity. Such a necessity does not exist here; and the fact that so many years of the exercise of this power has not produced payment of any part of the debts which the receiver was appointed to secure is an irresistible argument against his longer continuance.

The order of the court dismissing this application is therefore reversed, and the case remanded to the circuit court, with instructions to ascertain the amount due to complainants, within some reasonable time to be fixed by said court, and to make an order that in the payment of that sum, with the cost of complainants, into court, the receiver shall be discharged, and the railroad from Milwaukee to Portage City, with all the appurtenances, rolling stock, and other property,
real and personal, belonging to said division of road, be de-
203 livered by said receiver to the Milwaukee and Minnesota Railroad Company; but that no such discharge of the receiver or delivery of the road and its appurtenances shall be made until said company shall first enter into bond with sufficient surety, to pay to Sebre Howard and Selah Chamberlain all such sums as may come into the hands of said company, which shall hereafter be found to be rightfully applicable to the payment of their claims, if they shall be established as liens on said road.

And the appellant recover his costs in this court.

204 *Exhibit No.* 11.

Know all men by these presents, that the Milwaukee and St. Paul Railway Company, as principal, and David M. Hughes, Alexander Mitchell, Russell Sage, Fred. P. James, N. A. Cowdrey, Horace

Galpin, William H. White, George W. Rodgers, Selah Chamberlain and Asahel Finch, as sureties, are held and firmly bound unto the United States of America, for the use and benefit of all interested herein, in the penal sum of one hundred thousand dollars, lawful money of the United States of America, to be paid to the said obligee, its assigns or any party interested therein, to which payment, well and truly to be made to said obligee, the said obligors bind themselves, their heirs, executors, administrators, and assigns, firmly by these presents.

Sealed with our seals and dated this twelfth day of June, in the year one thousand eight hundred and sixty-three.

The condition of this obligation is such, that whereas the district court of the United States for the district of Wisconsin, in a certain case therein pending, wherein Greene C. Bronson, James T. Soutter, and Shepherd Knapp are complainants, and the La Crosse and Milwaukee Railroad Company and others are defendants, made a certain order, bearing date on the twelfth day of June, A. D. 1863, directing the receiver to let the said Milwaukee and St. Paul Railway Company into possession of the eastern division of the La Crosse and Milwaukee railroad, between Portage City and Milwaukee, with its appurtenances, property, and rolling stock belonging thereto, and directing said Milwaukee and St. Paul Railway Company, subject to the further order or orders of said district court, to operate said eastern division of said railroad in connection with the western division thereof, from Portage City to La Crosse, so that one continuous line of railroad between La Crosse and Milwaukee might be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Company without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company, in pursuance of said charter and not otherwise.

And further directing that the said Milwaukee and St. Paul Railway Company shall, at all times, allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, daily access and examination of the records, books, and papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Company, and of its board of directors, in relation to the business and operations of the whole line of road, and that the said railway company should, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of net revenues of the said board.

Now, therefore, if the said Milwaukee and St. Paul Railway Company shall faithfully comply with said order of said court and all subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and shall keep said road

and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La Crosse and Milwaukee Railroad Company, and shall make monthly returns, and pay over the net revenues the said road according to said order, then this obligation to be null and void, otherwise to remain in full force and virtue.

The Milwaukee and St. Paul Company—by its president:

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| [SEAL.] | D. M. HUGHES, *President.* |
| [SEAL.] | D. M. HUGHES, |
| [SEAL.] | AL'X MITCHELL, |
| [SEAL.] | GEO. W. ROGERS, |
| [SEAL.] | F. P. JAMES, |
| [SEAL.] | N. A. COWDRY, |
| [SEAL.] | RUSSELL SAGE, |
| [SEAL.] | SELAH CHAMBELAIN, |
| [SEAL.] | HORACE GALPIN, |
| [SEAL.] | W. H. WHITE, |
| [SEAL.] | A. FINCH. |

Signed, sealed, and delivered in presence of—
JOHN W. CARY.

RUSSELL SAGE, JR., *Secretary.*

JUNE 13, 1863.

This bond and the sureties approved by the court.

A. G. MILLER.

205 APRIL 11, 1866.

This day came the parties and filed their stipulation as to testimony taken before H. L. Palmer.

APRIL 14, 1866.

This day came the Milwaukee & St. Paul Railway Company, by its counsel, and filed its motion to dismiss the second supplemental bill, as follows, to wit:

U. S. circuit court, 9th circuit and district of Wisconsin.

MILWAUKEE AND ST. PAUL RAILWAY COMPANY, impleaded, &c., *ads.* MILWAUKEE AND MINNESOTA RAILROAD COMPANY.

And now comes the said Milwaukee & St. Paul Railway Company, by John W. Cary, solicitor, and moves the court now here to strike from the files the second supplemental bill filed by the said complainant, and for reasons assigns the following:

1st. The matter of said bill is not proper supplemental matter, but is the subject of an original bill.

2d. It is not within the terms of the stipulation.

JOHN W. CARY,
*Sol. for Compl't.*

APRIL 16, 1866.

This day, on motion of Matt. H. Carpenter, solicitor for the Milwaukee and Minnesota Railroad Company, it is ordered that the said Milwaukee and Minnesota Railroad Company have leave to file a second supplemental bill, to be heard in connection with the supplemental bill exhibited by said company in this cause, on the 10th day of August, A. D. 1864, as it shall be advised. And ordered further, that the supplemental bill exhibited, served, and filed by said company, on the first day of the present term, be and remain of record in this cause, and be considered heretofore as exhibited under the
206 leave of the court heretofore in this order granted, and that the same be heard in connection with said first supplemental bill as a part of this cause.

And came the Milwaukee and St. Paul Railway Company by its solicitor, and filed its demurrer and answer to the second supplemental bill, as follows, to wit:

In the circuit court of the United States, 9th circuit, for the district of Wisconsin.

MILWAUKEE AND MINNESOTA RAILROAD COMPANY
*vs.*
JAMES T. SOUTTER and SHEPHERD KNAPP, survivors of Green C. Bronson, deceased, William Wallace Pratt, William White, and the Milwaukee and St. Paul Railway Company.

The demurrer of the Milwaukee & St. Paul Railway Company to part, and their answer to other parts, of the second supplemental bill of the Milwaukee & Minnesota Railroad Company against this defendant, and James T. Soutter and Shepherd Knapp, survivors of Green C. Bronson, deceased, Wm. Wallace Pratt, and William White:

As to so much of the complainant's bill as does not relate to the rolling stock in the said bill and in the first supplemental bill of the complainant mentioned, and as seeks discovery and relief in matters and things distinct and different from said rolling stock, this defendant by protestation not confessing or acknowledging any of the matters or things in the said bill contained not relating to the said rolling stock, but distinct and different therefrom, to be true in manner or form the same as therein alleged, this defendant doth demur and for causes of demurrer showeth:

1st. That the said matters and things so demurred to are not the subject of the supplemental bill, but are the subject of an original, if any, bill, and are not in their nature supplemental to the bill of complaint of Green C. Bronson, James T. Soutter, and Shepherd Knapp, mentioned in the said second supplemental bill.

207 2d. That the said matters and things so demurred to relate to distinct and different subjects, and seek distinct and different relief from the matters and things contained and the relief prayed in and by the said first supplemental bill of the said complainant, and ought not to have been joined in one proceeding with the said first supplemental bill.

3d. That this court hath not jurisdiction to entertain the said bill, or to grant the relief thereby prayed in relation to the matters and things so demurred to in this cause and between the parties thereto.

4th. That the matters and things so demurred to do not make or state such a case as doth or ought to entitle the complainant to any such discovery or relief as is by the said bill sought and prayed for, in relation to the matters and things so demurred to, against this defendant.

Wherefore and for divers other good causes for demurrer, this defendant, as to so much of the said bill above mentioned, doth demur and demand the judgment of this court whether they ought or shall be compelled to make any other answer thereto.

And this defendant, not waiving their said demurrer, but wholly relying and insisting thereon, for answer to so much of the said bill as this defendant is advised is material or necessary for them to make answer unto, answering say that they admit the filing of the original bill, and that the same proceeded to final decree of foreclosure and sale as stated in the said bill, and the filing of the said complainant's first supplemental bill as stated in the said bill; and admit on their information and belief that in the suit in favor of James T. Soutter, survivor, against the La Crosse & Milwaukee R. R. Co., and others in the said bill mentioned, proceedings took place as in the said bill stated since the filing of the complainant's first supplemental bill; but pray leave for greater certainty to refer to the record of such proceedings or to such proof thereof as the complainant may be advised to make.

And this defendant, further answering, denies that they submitted themselves to the jurisdiction of this court in the said suit of James T. Soutter, survivor, &c., against the La Crosse & Milwaukee
208 R. R. Co. and others, as stated in the said bill, otherwise than by filing and insisting upon their exceptions to the report of the auditor, or for any other purpose or in any other thing than the account stated in the report of the auditor.

And these defendants are advised and insist that as the said account had relation to both divisions of the road mentioned in the pleadings in both causes, the reference of the said account to the auditor and his report thereon, and the exceptions thereto, and the order of the court disposing of the exceptions and settling the accounts, should be held and deemed to have like relation to the cause of James T. Soutter and Shepherd Knapp, survivors, &c., against the La Crosse & Milwaukee Railroad Co. and others, and the cause of James T. Soutter, survivor, &c., against the La Crosse & Milwaukee Railroad Co. and others, although formally proceeding in the latter cause only, and that the appearance of this defendant to file and insist upon ex-

ceptions to the auditor's report should be held and taken as an appearance, even for the purpose of litigating the account in the former suit in which they became purchasers of the mortgaged premises sold under the decree.

And this defendant, further answering, denies that this court did or could, or did intend to, adjudicate on the question of the ownership of the rolling stock as claimed by the complainant and this defendant, or to adjudicate that all the rolling stock which was on the La Crosse & Milwaukee railroad when the receiver was appointed, except forty box cars, belong to or were owned by the complainant in and by the order of the court disposing of the said exceptions and settling the said account.

And this defendant is advised and insists that the said order has no force beyond its terms, and is thereby to be construed, and cannot be enlarged or restrained by pleading or proof.

And this defendant, further answering, denies that John W. Cary was, or acted in this court as, counsel for the said James T. Soutter, survivor, in his suit to foreclose the mortgage on the eastern division, and denies that the decree of sale therein was prepared by or on advice with said John W. Cary; admits that the said John W.
209 Cary then was, and ever since has been, the solicitor and counsellor of this defendant, and admits that this defendant's officers, directors, and shareholders are owners of a large part of the bonds secured by the said mortgage last mentioned, but denies that this defendant is or ever was the owner of more that 66 of the said bonds, and admits that the said James T. Soutter proceeded to execute the decree last mentioned, and that in the month of January, 1866, and not in December, 1865, the complainant made the payment in the said bill stated, and that the money so paid or a large part thereof was distributed by orders of this court to the bondholders entitled thereto, including officers, directors, and stockholders of this defendant, but denies that the said complainant became entitled by any order of this court to the possession of the mortgaged premises mentioned in the said decree of sale, and denies that this defendant received any of the money so paid, except the interest on said 66 bonds by the complainant as a bondholder or otherwise.

And this defendant is advised that the said decree of sale and the subsequent proceedings thereunder have not any effect upon the title of this defendant to the rolling stock in dispute between this defendant and the complainant.

And this defendant, further answering, admits that the filing of the said bill of Bronson, Soutter, and Knapp, the said John W. Cary has been, remained, and is solicitor and counsel of the said Bronson, Soutter, and Knapp, in the conduct of their said cause to foreclose the land grant mortgage, and the solicitor and counsel of this defendant, as in the said bill stated, and that this defendant has been the owner of nearly all the land grant bonds as in the said bill stated, and that officers, directors, and stockholders of this defendant, including Russell Sage, Fred'k P. James, and N. A. Cowdery, were at the time mentioned in the said bill of complaint owners of bonds secured by

the mortgage to Bronson and Soutter, on the eastern division of the said road, but in what proportion or amount this defendant is not informed and cannot state; and denies that this defendant was the owner of any of the said bonds except said 66, and denies that at that or at any time the proceedings in the foreclosure of the eastern division, or any of them, were conducted with the aid and
210 efforts of this defendant. and states that some of such proceedings were approved and others thereof disapproved by this defendant, and that the officers, directors, and stockholders of this defendant sometimes approved and sometimes disapproved of the said proceedings, and sometimes differed amongst themselves in relation thereto and states whatever part may have been taken in said proceedings by any of the officers or stockholders of this defendant in relation to said proceedings was in their personal capacity, without authority from, or representation of, this defendant; and denies that this defendant or its directors or officers or the said John W. Cary, at the time mentioned in the said bill, or at any other time, knew that the Supreme Court of the United States had made the adjudication and decision mentioned in that behalf in the said bill.

And this defendant is advised and insists that the payment of the money as above and in the said bill mentioned by the said complainant was at the peril of the said complainant, and can have no effect upon the title of this defendant to the rolling stock hereinbefore mentioned.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged; without this, that there is any other matter, cause, or thing in the said bill of complaint contained material or necessary for this defendant to answer, and not herein and hereby well and sufficiently answered, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and approve as this court shall direct, and prays to be hence discharged with their reasonable costs and charges in this behalf wrongfully sustained.

Milwaukee and St. Paul Railway Company,
[SEAL.] By A. CARY, *Sec'y.*
JOHN W. CARY, *of Counsel.*

211 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

Alanson Cary, of said district, being duly sworn, says, that he is the secretary of the Milwaukee and St. Paul Railway Co., the defendant named in the foregoing answer; that he has read the foregoing answer and knows the contents thereof and believes the same to be true.

Subscribed and sworn before me, this 16th day of April, 1866.
JAMES McFARLIN,
*U. S. Com'r, District of Wisconsin.*

I certify that the foregoing demurrer is well founded in point of law.

April 16th, 1866.

JOHN W. CARY, *of Counsel.*

DISTRICT OF WISCONSIN, *ss:*

Russell Sage, vice president, being duly sworn, deposes and says that the foregoing demurrer is not interposed for delay.

RUSSELL SAGE.

Subscribed and sworn to this 16th day of April, 1866, before me.

JAMES McFARLIN,
*U. S. Com'r, Dist. of Wis.*

And came the Milwaukee and Minnesota Railroad Company by its solicitor and filed its replication, as follows, to wit:

Circuit court of the United States, for the district of Wisconsin, in equity.

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| THE MILWAUKEE AND MINNESOTA RAILROAD Company *vs.* JAMES T. SOUTTER *et als.* | Suit by supplemental bill. |

The replication of the Milwaukee and Minnesota Railroad Company to the answer of the Milwaukee and St. Paul Railway
212 Company to the second supplemental bill filed by said Milwaukee and Minnesota Railroad Company, April 9th, 1866.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove, as this honorable court shall direct, and hereby prays as in and by its said bill it hath already prayed.

MATT. H. CARPENTER,
*Sol. of the Milwaukee and Minnesota Railroad Company.*

And on the same day came Francis Bloodgood, a master of this court, and filed the depositions of Hans Crocker, Alexander Mitchell, E. H. Goodrich, T. L. Ogden, N. A. Cowdry, H. L. Palmer, and Byron Kilbourn, taken before him in this cause.

And came the parties by their counsel and filed their stipulation as follows, to wit:

Circuit court of the United States, district of Wisconsin.

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| THE MILWAUKEE AND MINNESOTA RAILROAD Company *vs.* JAMES T. SOUTTER *et als.* | Suit commenced by supplemental bill. |

It is hereby stipulated that the demurrer and answer of the Milwaukee and St. Paul Railway Company to the second supplemental bill of the Mil. and Minn'a Railroad Company shall stand also as the demurrer and answer of Soutter and Knapp, survivors, mutatis mutandis; and that the second supplemental bill, having been made by the court a part of this cause, be heard on bill, answer, and replication and testimony, including the testimony taken under the first supplemental bill.

213

M. H. CARPENTER,
*Sol. for Mil. and Minn. R. R. Co.*
JOHN W. CARY,
*Sol'r for Mil. and St. P. Ry. Co.*

At a stated term of the circuit court of the United States for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, on the second Monday (being the 9th day) of April, A. D. 1866.

Present and presiding, the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, assigned to this circuit, and the Honorable Andrew G. Miller, district judge.

On the seventh day of said term, to wit, on the sixteenth day of April, A. D. 1866, the following proceedings were had, to wit:

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| MILWAUKEE AND MINNESOTA RAILROAD Company *vs.* MILWAUKEE AND ST. PAUL RAILWAY Company and others. | Supplemental bill. |
| JAMES T. SOUTTER and SHEPHERD KNAPP, survivors, *vs.* MILWAUKEE AND MINNESOTA RAILROAD Company. | Cross bill. |
| MILWAUKEE AND MINNESOTA RAILROAD Company *vs.* JAMES T. SOUTTER *et al.* | 2d supplemental bill. |

This day this cause came on to be heard on the pleadings and proofs taken therein, and the court being divided in opinion, it is

ordered, adjudged, and decreed that said supplemental bills and said cross bill be, and the same are hereby, dismissed upon such division of opinion.

SAM. F. MILLER, *Judge.*
A. G. MILLER.

214 APRIL 17, 1866.

This day came the complainants in the cross bill, by John W. Cary, their solicitor, and prayed an appeal to the Supreme Court of the United States from the decree entered in this cause April 16th, 1866, dismissing said cross bill, whereupon it is ordered by the court that the said appeal be, and the same hereby is, allowed; and it is further ordered that the complainants give bond in the sum of five hundred dollars on said appeal, to be approved by the court or a judge thereof.

MAY 11, 1866.

This day came the complainant in the supplemental bill and second supplemental bill, by its counsel, and prayed an appeal to the Supreme Court of the United States from the decree rendered in this cause. Whereupon it is ordered by the court that an appeal be, and hereby is, allowed, and that the complainant execute a bond to the defendants in the penal sum of five hundred dollars, conditioned for the prosecution of said appeal, with sureties, to be approved by the court or a judge thereof.

NOVEMBER 3, 1866.

This day came James T. Soutter and Shepherd Knapp, survivors, &c., by their solicitor, and filed their bond on appeal in the sum of five hundred dollars, which is approved by the district judge, as follows, to wit:

Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER and SHEPHERD KNAPP, survivors, &c.,
*vs.*
MILWAUKEE AND MINNESOTA RAILROAD COMPANY.

Know all men by these presents, that we, James T. Soutter and Shepherd Knapp, as principals, and S. S. Merrill and David Ferguson, as sureties, are held and firmly bound unto the Milwaukee and Minnesota Railroad Company in the just and full sum of five hundred dollars, lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves and our legal representatives firmly by these presents.

215 Sealed with our seals, and dated this seventeenth day of April, A. D. 1866.

Whereas the said James T. Soutter and Shepherd Knapp, survivors, &c., have appealed to the Supreme Court of the United States

from the order and decree made by the circuit court of the United States for the 9th circuit and district of Wisconsin, in the above entitled cause, on the sixteenth day of April, A. D. 1866,

Now, therefore, the condition of this obligation is such, that if the said James T. Soutter and Shepherd Knapp, survivors, &c., shall prosecute their said appeal to effect, and answer all costs, if they shall fail to make good their appeal, then this obligation to be void, otherwise the same shall be and remain in full force and virtue.

[SEAL.] JAMES T. SOUTTER,
By JOHN W. CARY, *his Attorney.*
[SEAL.] SHEPHERD KNAPP,
By JOHN W. CARY, *his Attorney.*
[SEAL.] S. S. MERRILL.
[SEAL.] D. FERGUSON.

Indorsed: Nov. 3, 1866.—This bond approved.
A. G. MILLER, *District Judge.*

NOVEMBER 26, 1866.

This day came the Milwaukee and Minnesota Railroad Company by its solicitor, and filed its appeal bond, with the approval of the district judge indorsed thereon, as follows, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

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| THE MILWAUKEE AND MINNESOTA RAILROAD Company *vs.* THE MILWAUKEE AND ST. PAUL RAILWAY Company and others. | Suit by supplemental bill. |
| 216 JAMES T. SOUTTER and SHEPHERD Knapp *vs.* THE MILWAUKEE AND MINNESOTA RAILROAD Company. | Cross bill. |

Know all men by these presents, that the Milwaukee and Minnesota Railroad Company, as principal, and Aaron S. Bright and Josiah A. Noonan, as sureties, are held and firmly bound unto James T. Soutter and Shepherd Knapp, survivors of Greene C. Bronson, trustees, and the Milwaukee and St. Paul Railway Company, in the just and full sum of five hundred dollars, lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves and our legal representatives firmly by these presents.

Sealed with our seals, and dated this twenty-sixth day of November, A. D. 1866.

Whereas the said Milwaukee and Minnesota Railroad Company has appealed to the Supreme Court of the United States from the

order and decree made by the circuit court of the United States for the 9th circuit and district of Wisconsn, in the above-entitled cause, on the sixteenth day of April, A. D. 1866:

Now, therefore, the condition of this obligation is such that if the said Milwaukee and Minnesota Railroad Company shall prosecute its said appeal to effect, and answer all costs if it shall fail to make good its appeal, then this obligation to be void, otherwise the same shall be and remain in full force and virtue.

The Milwaukee and Minnesota Railroad Company.

[SEAL.] By A. FLEMING, *Vice President.*
[SEAL.] AARON S. BRIGHT.
[SEAL.] J. A. NOONAN.

217 DISTRICT OF WISCONSIN, *ss:*

A. S. Bright, being first duly sworn, on oath says that he resides in the city of New York, and his business office is 20 Broad street; he further says that he is worth more than one thousand dollars over and above all debts, liabilities, and exemptions of property from forced sale on execution.

AARON S. BRIGHT.

Subscribed and sworn to before me, this 26th day of November, A. D. 1866.

JAMES McFARLIN,
*U. S. Com'r, Dist. Wis.*

DISTRICT OF WISCONSIN, *ss:*

Josiah A. Noonan, being first duly sworn, on oath says that he is worth more than one thousand dollars over and above all debts, liabilities, and exemptions from forced sale on execution.

J. A. NOONAN.

Subscribed and sworn to before me, this 26th day of November, 1866.

JAMES McFARLIN,
*U. S. Comm'r, Dist. of Wis.*

Indorsed: I hereby approve this bond, this 26th day of November, 1866.

A. G. MILLER, *District Judge.*

The Milwaukee and Minnesota Railroad Company, to maintain the issue on its part, offered and read in evidence, on the trial of this cause, the following depositions:

218 *Deposition of Russell Sage.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, James McFarlin, commissioner of the circuit court of the United States for said district, do hereby certify that on the 12th day of June, 1865, the annexed deposition was commenced before me at my

office in the city of Milwaukee in said district; that the witness was first sworn to testify the truth, the whole truth, and nothing but the truth; that the testimony, after being commenced by me, was reduced to writing by M. H. Carpenter and Jas. G. Jenkins, by consent of the parties, and by and under my direction, in the presence of the witness; that said deposition was taken on behalf of the complainant, to be used in the suit of the Milwaukee and Minnsota Railroad Company *vs.* The Milwaukee and St. Paul Railway Company and others; that the parties were present at the taking thereof by their respective counsel; that said deposition not being concluded, the examination was adjourned until the next morning, and then further adjourned until July 1st, 1865, at 3 p. m., and was then completed, except signing by the witness; that afterwards, on the 13th day of July, 1865, the witness came before me and read over the deposition and signed the same. I further certify that my fees for taking the same is $9 30, and that I am not of counsel for either of the parties in said suit.

In testimony whereof I have hereunto set my name, this 13th day of July, 1865.

JAMES McFARLIN,
*Commissioner Circuit Court U. S. District of Wis.*

[Stamp.]

Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE AND MINNESOTA Railroad Company *vs.* THE MILWAUKEE AND ST. PAUL Railway Company *et al.* } Suit by supplemental bill.

219 The depositions of Russell Sage, a witness produced on behalf the complainant, who being first duly sworn to speak the truth, the whole truth, and nothing but the truth, in the above-entitled cause, deposed as follows, to wit:

1st question. What is your name, age, and where do you reside?

Answer. Russell Sage; am forty-seven years of age; and reside in the city of New York.

2d question. Are you at present the president of the Milwaukee and St. Paul Railway Company, and how long have you been?

Ans. I am, and have been since the first of July last.

3d ques. Are you acquainted with the business affairs and financial condition of that company?

Ans. I am.

4th ques. What is the amount of its debt secured by mortgage?

Ans. Six million one hundred thousand dollars, of which four million six hundred thousand dollars is a first mortgage and one million five hundred thousand dollars is a second mortgage, so called. The first and second mortgages covers the entire railroads, franchise, and rolling stock of the company.

5th ques. Have all the bonds secured by these mortgages been passed from and disposed of by the company?

Ans. All the first mortgage bonds have been disposed of except those held by the trustees to exchange for the outstanding bonds of Milwaukee and Watertown and the Milwaukee and Western Railroad Companies. And of the second mortgage bonds about nine hundred thousand have been disposed of and the balance have been used as collateral for the indebtedness of the company.

6th ques. What amount of the first mortgage bonds are so held by the trustees?

Ans. I am unable to state the exact amount. My impression is that it is about four hundred thousand dollars.

7th ques. What is the amount of the floating debt of the company?

Ans. I am unable to state that exactly, as it is difficult to state the amount of so large a corporation with its varied business transactions. My impression is that it is not far from a million of dollars.

8th ques. Is the floating debt in any way secured by the company?

(Objected to by def'ts' counsel as immaterial to the issues
220 involved.)

Ans. A portion of it is secured by the second mortgage bonds as stated by my answer to the fifth question, and seventy-five thousand dollars additional by other collaterals owned by the company. The balance is unsecured.

9th ques. Has any and what amount of the paper of this company matured and gone to protest? If so, when?

Ans. I am unable to state the amount that has been protested, as the company is making payments and renewing the protested paper daily.

10th ques. State as near as you can what amount has been protested and at what time the first was protested, or about what time.

Ans. I am unable to state the amount, as a large portion of it has been renewed, with partial payments on it. I think the first paper protested was the early part of May last.

11th ques. What is the present market value of the first mortgage bonds of the company, and what of its second mortgage bonds?

(Objected to by the def't as immaterial.)

Ans. The first mortgage bonds is from 75 to 80 cents on the dollar, and the second 70 to 75 cents on the dollar. I know of none of the latter having been sold sell than seventy cents.

12th ques. What is the market value of the stock of the company?

(Objected to as above.)

Ans. The last sales I have heard of were 60 cents on the dollar for the preferred stock, and about 50 cents on the dollar for the common stock.

13th ques. What is the amount of the preferred and what of the common stock of the company?

Ans. Two million four hundred thousand preferred, one million common.

14th ques. What is the length of the railroad claimed to be owned by the company, of what roads does it consist, and the length of each?

Ans. The whole length is 273 miles, (two hundred seventy-three,) and consists of the line from Milwaukee to La Crosse, 195
221 miles, from Watertown to Sun Prairie, 26 miles, and from Horicon to Berlin, 43 miles, and from Ripon to Omro, 9 miles.

15th ques. The line you speak of from Milwaukee to La Crosse is the Watertown division, so called, and the western division, so called, of the La Crosse and Milwaukee railroad, is it not?

Ans. Yes.

16th ques. Does the company own or is it interested in the large elevator recently built at Milwaukee? And if yea, what is the extent of its interest therein?

Ans. The company owns it entirely.

17th ques. Did you, as the holder of 80,000 dollars of the bonds secured by the mortgages from the La Crosse and Milwaukee Railroad Company to William Barnes, sign a written request to him to foreclose that mortgage, or those mortgages?

(Objected to by defendant as immaterial.)

Ans. I did sign such request, after his refusal to proceed and foreclose said mortgage by a suit in chancery, which I had requested and urged him to do, and I was the holder at the time of 80,000 dollars of said bonds.

18th interrogatory. Who has the eastern division of the La Crosse and Milwaukee railroad been operated by since June 13, 1863?

Ans. My recollection is that it was operated by the Milwaukee and St. Paul Railway Company from June 13, 1863, to May 1, 1864, and by Hans Crocker, receiver, since that time.

19th ques. Has not the eastern division been in fact operated by the officers and agents of the Milwaukee and St. Paul Railway Company since May 1, 1864, and have not the revenues arising from the operation thereof been in all cases received directly by the officers of said company?

Ans. As previously stated, it has been operated by the receiver of the court since May 1, 1864, and the manner of his keeping his accounts I am unacquainted with, never having examined the books—his books.

20th ques. Do you not know that every dollar of receipts *of*
222 *receipts* of revenue of the eastern division since May 1, 1864, has been in fact received by the officers and agents of said company?

Ans. I don't know that fact.

21 ques. Has not the company, or have not the officers and agents of that company, since May 1, 1864, employed all the operatives, conductors, and other workmen on said eastern division, and paid them so far as they have been paid?

Answ. I don't know, as I have not examined his books—the receiver's books—as to the management of the eastern division.

22 ques. Will you look at map here shown you, and say whether it correctly represents the situation of the eastern division, the Chi-

cago & Northwestern Railroad Company's road, and the roads claimed to be owned by the Milwaukee & St. Paul Railway Company?

Answ. From a hasty examination of it I believe it to be correct.

(NOTE.—The complainants here offer said map in evidence, to be returned with this deposition, and it is marked Exhibit No. 1 by me.)

23 ques. Do you know what arrangement of trains has been adopted and is now in operation upon said eastern division with reference to making connection with trains on other roads?

(Objected by defendant as immaterial.)

Answ. I have not examined the time table of the general manager; that duty has devolved upon him, and is performed by him; that is his last time table.

24 ques. What general manager?

Answ. I misunderstood the question No. 23, and thought it related to the St. Paul's time table, and not to the eastern division. I don't know.

25 ques. Where, and in whose possession, is the rolling stock that was on the La Crosse & Milwaukee railroad, when the receiver was appointed, except the 40 box cars described by numbers in the land grant decree?

Answ. It is in possession of the Milwaukee & St. Paul Railway Company, and has been since June 13, 1863.

223 26 ques. Has this rolling stock been used since that time by your company on all its roads, as it had need for the use of rolling stock?

Answ. I presume it has.

27 ques. Is it now so used?

Answ. I believe it is.

28 ques. Aside from the said rolling stock, and that which was purchased by the receiver, a proportion of which was sold under the said grant decree, what rolling stock has the Milwaukee & St. Paul Railway Company?

Answ. I am unable to state the amount. The company has the stock which belonged to the Milwaukee & Western railroad and the Milwaukee & Horicon railroad, and what has been constructed by the company since that date, together with some forty cars owned by the Minnesota Central Railway Company, and three of the last-named company's locomotives, which were used during the full business of 1864.

29 ques. What person, officer of said company, can furnish an accurate statement of the matter inquired of in 28 question?

Answ. The general manager, E. H. Goodrich?

30 ques. What amount of scrip has your company issued, which is yet unpaid, for labor and materials used in completing or operating the company's roads?

Answer. The amount issued was one hundred and eighty-three thousand dollars, forty-eight thousand dollars of which is receivable for freight this month, and a part of it has been received, and is being received daily now, and cancelled. This one hundred and eighty-three thousand dollars of scrip is a part of the floating debt named by me before.

31 ques. What has become of the money arising from the operation of the eastern division, from June 13, 1863, to May 1, 1864?

Answ. The greater portion of it has been expended in operating the eastern division and improving it, and the payment of interest on the mortgage bonds secured on the same. There is a bal-
224 ance in hands of the company.

32 ques. Was the money which arose from the operating of the eastern division within the date last aforesaid kept separate from the other moneys of your company?

Answ. I don't know. The manager and treasurer have kept the accounts; the accounts were kept separate.

33 ques. Who is book-keeper of the company? and can he furnish a more accurate or definite statement of the floating debt of the company?

Answ. Mr. Whaling is the chief clerk, and keeps the books.

34 ques. Was you in Milwaukee during the foreclosure of the Barnes mortgage, and did you advise with Barnes in regard to that foreclosure?

(Objected to by def't as immaterial.)

Answ. I was here in Milwaukee during the foreclosure of the Barnes mortgage; I talked to him, but he did not follow my advice in many material respects; if he had, he would not have foreclosed it in the manner he did.

35 ques. After the foreclosure did you sign the deed of organization of the Milwaukee & Minnesota Railroad Company, and was you elected the first president of that company?

(Objected to as above.)

Answ. I did, and I was.

36 ques. Did you continue president of that company for some, and what, time?

Answ. I was president of it about two years.

By consent the further examination was adjourned until to-morrow morning at nine o'clock, and was at such adjourned time further adjourned until July 1st, at 3 p. m.

JULY 1ST, 3 P. M.

The parties appeared pursuant to adjournment; Mr. Jenkins for complainant, and Mr. Cary for defendant, and the further examination of the witness was had as follows:

37 ques. Did you include in your estimate of the floating debt of the Milwaukee & St. Paul Railway Company the amount of $327,118 52 found by H. L. Palmer, esq., auditor in the suit of James T. Soutter, survivor, &c., *vs.* The La Crosse & Milwaukee railroad *et al.*, pending in this court, to be due from the Milwaukee & St. Paul Rail-
225 way Co. to Hans Crocker, receiver?

Answ. I did not; that report was not filed at the time I gave my answer, but I did include what our books showed to be his due, some $103,000, $38,000 of which was paid to him yesterday.

38 ques. Have any, and how many, and what suits been commenced against the St. Paul Company upon its protested acceptances, and what amount in each suit?

Answ. I think four suits have been commenced within the past twenty days; one by Bagnall & Co.; one by F. Charnley; one by E. P. Allis & Co., and one by N. B. Caswell. I think the aggregate amount claimed in these suits is some fifteen thousand dollars.

39th ques. Have not the funds and property of the St. Paul company been attached or garnished in these suits?

Answ. Yes, these were garnishee suits, and the property of the company in the hands of the Wisconsin Marine & Fire Insurance Co. Bank, and of S. J. Higby was attached.

40th ques. Have you not, since the service of such garnishee proceedings and the commencement of such actions, induced Mr. Higby to pay over the amount in his hands belonging to the St. Paul Company to protect it from further threatened or apprehended proceedings?

(Objected to by Mr. Cary.)

Answ. I induced him to pay it over to enable the company to pay its employees, and the expenses of operating the road, as the suits were brought by parties who had agreed to extend their claims for a period of four or five months, or a large majority of the amount.

41st ques. Did you not induce him to pay over the entire, and what, amount in his hands?

Answ. I induced him to pay what was due at the time he paid it. I think the amount was between eighteen and nineteen thousand dollars.

42d ques. Was not Mr. Higby indemnified by you against all loss by reason of such paym't?

(Objected to by Mr. Cary as immaterial and impertinent to the issue.)

Answ. He was.

43d ques. Has any, and what, portion of the amount received from Mr. Higby been applied to the payment of the debts sought to be enforced in such suits?

226 (Objected to by Mr. Cary as immaterial and impertinent to the issue.)

Answ. No portion of it has been so applied for the reasons named before.

44th ques. How long have you been in Milwaukee during your present visit?

Answer. Fourteen or fifteen days.

45 ques. During that time have you sent or caused to be sent to the east any, and what, amount of money belonging to the St. Paul co., and for what purpose was it so sent?

(Objected to by Mr. Cary for the same reasons as last above.)

Answ. I have remitted $20,000 to apply on account of interest on first mortgage bonds, due July 1st, and $25,000 in payment of a loan had at the Importers and Trader's Bank of New York for the St. Paul co.

46th ques. Have you remitted any other amounts than stated in your last answer?

Answ. No.

47th ques. Was not the loan of $25,000 of the Importers and Traders' Bank secured by collateral belonging to you, and pledged therefor, and was not that sum sent by you to release such pledge?

(Objected to by Mr. Cary for same reasons as above.)

Answer. It was not.

48th ques. What collaterals were pledged and to whom did they belong?

(Objected to by Mr. Cary for same reasons as above.)

Answer. Second mortgage bonds of and belonging to the St. Paul co. were pledged for such loan.

49th ques. Have you paid or caused to be paid the pay rolls for the month of May last, and the employees of the road during that month?

(Objected to by Mr. Cary for same reasons as above.)

Answer. I have the greater part of it.

50 ques. How much still remains unpaid?

(Objected to by Mr. Cary for same reasons.)

Answ. I am unable to state. I directed the treasurer to pay all that came to-day, and he has paid all that have come, and a large number have been paid to-day.

51 ques. Have you provided for the payment of the interest due to-day by the company on its mortgage bonds, and what amount is so due, and what amount of money has been provided for its payment?

(Objected to by Mr. Cary same as above.)

Answ. I have provided for the payment of $70,000 of the
227 amount due, and for the holding of the balance until the earnings of the road would enable us to pay it. The amount due to-day for interest is one hundred and sixty thousand dollars.

52 ques. Is the $70,000 so provided to be paid pro rata to the bondholders generally, or to certain particular bondholders?

Answ. To bondholders generally, and not to any particular bondholders; coupons will be paid to-day as they are presented. We have made arrangements that but $70,000 of coupons will be presented, and they will be paid in full. The balance we have arranged that they will not be presented, but held.

53 ques. Is there any and what amount of interest due and unpaid on the second mortgage bonds?

Answ. There is none at all due, perhaps a few straggling coupons; all presented have been paid.

54 ques. Are there any and what amount of collaterals belonging to the directors of the St. Paul co., or any of them, pledged for loans made in behalf of that company?

(Objected to by Mr. Cary same as above.)

Ans. There are none.

Cross-examined by Mr. Cary:

First cross-question. The second mortgage bonds, which you say are undisposed of, will they reduce the floating debt to the amount that may be received for them when sold?

Ans. I believe they will.

2d cross-ques. Are they held now as security for this same floating debt?

Answ. They are.

3d cross-ques. Has provision been made for the payment of all the pay-rolls for the month of May? and will the same be paid as fast as the men present themselves to receive it?

Ans. Yes.

4th cross-ques. What amount of floating debt of the company has been liquidated out of the earnings of May and June, 1865?

Answ. Nearly $250,000 up to this date.

5th cross-ques. What amount of outstanding scrip of the company, and what amount of money has been received to-day in payment to the company for freight and passengers?

Answ. About $17,000 of scrip, and some $6,000 in cash.

6th cross-ques. Did the trains run on the eastern division from Dec. 1st last up to the time when a change was made so as to
228 run but one mixed train a day, pay running expenses?

Ans. My opinion is they did not.

7th cross-ques. Since that change has this mixed train paid running expenses? and if so, what amount has it netted?

Answ. It has paid more than running expenses, and netted in May about $5,000, and will, in my opinion, net $7,500 for the month of June.

8th cross-ques. Are you acquainted with railroad business and management? and how long have you been so acquainted?

Ans. I am, and have been for over 15 years.

9th cross-ques. Are you acquainted with the Milwaukee and St. Paul railway, and this eastern division of the La Cross road, and their connection with the Chicago and Milwaukee road, and the boats running east from Milwaukee?

Ans. I am.

10th cross-ques. Have these roads any other eastern or southern connection at Milwaukee except the Chicago roads or the boats?

Ans. They have not.

11th cross-ques. Situate as the Milwaukee and St. Paul Railway Company is with respect to this eastern division, would it be possible to direct the travel coming from the Mississippi river at La Crosse to Milwaukee, and thence to Chicago, off from the thro" line of the St. Paul co. over the eastern division as a separate route?

Answer. I do not believe it could to an amount that would half cover expense of running the trains.

12th cross-ques. How would it be with travel arriving on the Chicago and Milwaukee road, or the boats, or starting from Milwaukee and going to La Crosse and the Mississippi river?

Ans. It would be the same as answered to the last preceding interrogatory.

13th cross-ques. Could express trains be run on this eastern division on the same time with the Milwaukee and St. Paul Railway

Company so as to connect at Portage, without very greatly increasing the running expenses of operating the eastern division?

Answer. They could not; and from careful personal examination of the running of trains heretofore on the eastern division, I was convinced that it would be impossible to make them pay, and Mr.
229 Goodrich, the general manager, was also of the same opinion.

(The complainant excepts and objects to all of the foregoing answer after the words, "they could not," as not being called for by a responsive to the question.)

14th cross-ques. Was it after such examination that the change was made to run but one train a day on that road? and was there any intention of diverting business from the eastern division into the St. Paul road, or injuring the eastern division in making said change?

Answer. It was after such examination and with no such intention.

15 cross-ques. Are there any facts that you can state that are within your knowledge showing the propriety of this change?

Answ. There are. In April last I went over the Milwaukee and St. Paul railroad to Portage City and to La Crosse, and from La Crosse to Portage City, and over the eastern division to Milwaukee, and was at Portage City two nights on the arrival of the express train over the eastern division from Milwaukee, and examined the trains as they arrived, and found there was but very few passengers. My impression is five in one train and but three or four in the other.

16 cross-ques. Was the same charge made upon any part of the Milwaukee and St. Paul road at the same time? and what parts of it?

Answ. Changes were made on the line from Milwaukee to Sun Prairie, and also on the Berlin road, and one continued to the present time.

17 cross-ques. Were such changes beneficial on said lines?

Answ. They were greatly so.

18 cross-ques. Have you any interest in the eastern division? and if so, what is it, and to what extent?

Answer. I have an interest in the eastern division to nearly four hundred thousand dollars, and mostly in the second mortgage bonds, so called.

19 cross-ques. What was the expense per mile of passenger trains on the eastern division or on the Milwaukee & St. Paul Railway Company road from December 1st, 1864, to April 1st, 1865?

Answer. I estimate them at not less than two dollars per
230 mile, as the winter was very cold and the injury very great.

20 cross-ques. What, in your opinion, is the fair value of the eastern division of the La Crosse and Milwaukee railroad?

(Objected to as irrelevant and immaterial to the issues.)

Answer. Not to exceed two millions and a quarter of dollars, including the rolling stock.

21 cross-ques. Would it yield any net income as it is situate, if there was competition and cutting of rates between it and Milwaukee and St. Paul Company?

Answer. I don't think it would.

The further examination of this witness is adjourned until Monday morning, July 3d, 1865, at 10 o'clock a. m.

RUSSELL SAGE.

Sworn to and subscribed before me, July 13, 1865.

J. McFARLIN, *Com'r.*

[Here follows map marked page 231.]

232 *Deposition of E. H. Goodrich.*

UNITED STATES OF AMERICA, *District of Wisconsin:*

I, James McFarlin, a commissioner of the circuit court of the United States for the district of Wisconsin, do hereby certify that on the 12th day of July, 1865, the annexed deposition of Edwin H. Goodrich was taken by and before me at my office in the city of Milwaukee, in said district; that the witness was first sworn to testify the truth, the whole truth, and nothing but the truth; that the testimony of said witness was reduced to writing by James G. Jenkins, esq., by consent of parties, and by and under my direction, in the presence of said witness; that said deposition was taken at the request of the defendant, the Milwaukee and St. Paul Railway Company, and is to be used in the suit of the Milwaukee and Minnesota Railroad Company *vs.* James T. Soutter and Shepherd Knapp, survivors of Greene C. Bronson, trustees, and others; that the complainant and defendant were present at the taking thereof by their respective counsel, Mr. Carpenter and Jenkins for the complainants, and John W. Carey, esq., for defendant; that said deposition was read over by said witness, and then subscribed by him in my presence; that my fees for taking said deposition is the sum of five dollars and thirty cents; and I further certify that I am not of counsel for either of the parties in said suit.

In testimony whereof I have hereunto set my hand, this 13th day of July, 1865.

JAMES McFARLIN,
*Commissioner Circuit Court U. S. Dist. of Wis.*

[Stamp.]

Circuit court of the United States for the district of Wisconsin, in equity.

| | |
|---|---|
| THE MILWAUKEE AND MINNESOTA RAILROAD Company *vs.* JAMES T. SOUTTER and SHEPHERD KNAPP, survivors of Greene C. Bronson, trustees, William Wallace Pratt, William White, and the Milwaukee and St. Paul Railway Company. | Suit by supplemental bill. |

JULY 12, 1865.

233 Deposition of Edwin H. Goodrich, a witness produced on

the part of the defendant, being first duly sworn to testify the truth, the whole truth, deposes and says as follows:

J. W. Carey, esq., appeared on the part of the defendant, the Milwaukee and St. Paul Railway Company, and James G. Jenkins, esq., of counsel for complainants.

1 question. Were you general manager of the St. Paul and Milwaukee Railway Company from the 12th day of June, 1863, to the 1st day of July, 1865, and had you been manager of the La Crosse road for several years prior to that?

Answer. Yes.

2 question. Did you have the management of the eastern division of the La Crosse road under Hans Crocker, receiver, from May 1, 1864, to July 1st, 1865?

Answer. Yes.

3d question. Were the trains on the eastern division during that period run, as you conceive, for the best interest of that division as it was situated?

234 Answer. Yes, substantially, so far as receipts and expenditures were concerned.

4th ques. As that division is situated, can it compete successfully for business from Milwaukee to La Crosse, or from La Crosse to Milwaukee, with the St. Paul Railway Company?

Answer. As to freight business it can; and while as much time is occupied in changing passengers as at present from the Chicago and Milwaukee railway to the St. Paul railway, it can compete for passengers, provided the Chicago and Northwestern Railway Company should run their express trains at as high a rate of speed between Watertown and the Minnesota Junction as they are run between Chicago and Janesville, and the St. Paul company should extend to the eastern division the courtesies usually extended to connecting roads in the way of waiting for the delay of trains.

5th ques. During the time mentioned has there been business on the eastern division that would warrant the running of an express train between Milwaukee and Portage, and would it have been profitable so to do?

Answer. I think it would have paid expenses during the larger portion of that time, provided the conditions contained in the last answer had been fulfilled.

6 ques. In doing a through freight business from Milwaukee to La Crosse, and from La Crosse to Milwaukee, is this eastern division entirely dependent on the St. Paul company for its transportation from Portage to La Crosse?

Answer. Yes.

7th ques. Under these circumstances could it do a profitable through freight business in opposition to the interests of that company?

Answer. It could do a profitable through freight business in opposition to the interests of that company, if that company would do business for the eastern division at the same rates that it does for

other railway companies that work in opposition to that portion of its line east of Watertown.

8th ques. What would be the effect of the rolling stock on railroads being kept in use and in good repair as compared with its standing still without repair?

Answer. All that could be housed and properly taken care of would not suffer by standing still. All such as was exposed to the
235 weather would not be injured by use if kept in thorough repair. All such as was not housed, if allowed to stand still without repair, would suffer materially.

9th ques. In order to make connection with the Lake Shore train at Milwaukee, and the express passenger train of the St. Paul railway at Portage, would it require a much greater speed than is usual with express trains on the eastern division?

Answer. It would not require a much greater rate of speed, provided the trains of the Northwestern Railway Company were run as stated to my answer to the fourth interrogatory, the difference in distance between Milwaukee and Portage City by the eastern division and by the St. Paul railway being only about three miles.

10th ques. If the St. Paul railway made close connection with the Northwestern at Watertown, would that increase the rate of speed required on the eastern division?

(Question waived and withdrawn.)

11th ques. If only mixed trains are run upon the eastern division, can they be so run as to make connection at Milwaukee and Portage with the express trains on the Chicago and Milwaukee and Milwaukee and St. Paul railways?

Answ. They cannot, unless the mixed trains are improperly run.

12th ques. Does the mixed train on the eastern division make connection with the Northwestern road at Minnesota Junction?

Answer. It did going west while the road was under my charge, and I know of no change since.

13th ques. How much would the running of an express train on that division cost?

Answer. During the term mentioned, that is, from May, 1864, to July, 1865, I should estimate the average costs at $1 75-100 per mile.

1st cross-interrogatory. During the period from May 1, 1864, to July 1, 1865, did not the Milwaukee and St. Paul Railway Company receive the revenue of the eastern division, and was not that division operated by said company during that time?

Answer. Yes; the St. Paul company received the income and operated the road.

2d cross-ques. Did not you have charge of that eastern division for the St. Paul company and as its general manager?

236 Ans. Yes.

3d cross-ques. Please explain your answer to the third direct interrogatory.

Answ. My idea is that the manner in which the trains were run for three months prior to July 1, 1865, did not accommodate the pub-

lic along the line of the road as well as the manner in which the trains were previously run. The manner in which the business is now done is more profitable to the eastern division than the manner in which it was done subsequently to Nov. 1, 1864, and up to April 1, 1865. I can't say as to the time prior to November 1, 1864, without reference to books of the company; from November to April it is usually the dullest and always the most expensive portion of the year to operate a road.

4th cross-ques. In answering the 3d direct question, what do you understand by the phrase "as it was situated" used therein? Do you understand the question to refer to the eastern division as it was situated with reference to the St. Paul Railway Company, or how do you understand it?

Answer. I understand the phrase to mean as the division was situated with reference to the St. Paul Railway Company, and answered the question with that understanding.

5th cross-ques. Would not the explanation made by you in answer to the 3d cross-question, and the reasons there given, have been equally as cogent to induce a similar change in the running of trains on the St. Paul railway, and was such change in fact made?

Answer. The same reasons would apply for such a change, but not to the same extent, for the reason that there was more business on the main line of the St. Paul railway than on the eastern division of the La Crosse road. No such change was in fact made on the main line, but the policy of so doing had been discussed, and was strongly urged, by some members of the board. Such change was made as to the branch line from Barnet junction to Berlin and Ormo, but was not on the main line.

6th cross-ques. Were the same efforts made to secure through freight and travel over the eastern division as over the St. Paul road?

237 Answ. No.

7th cross-ques. Were any efforts made to secure through freight or travel over the eastern division?

Answer. None that I know of.

8th cross-ques. Was not the policy of subordinating the eastern division to the St. Paul railway uniformly acted upon in the management of the eastern division?

Answ. I don't think it was. The eastern division was treated as a local road entirely. There was competition by the St. Paul Railway Company for the business west of the Minnesota junction and for the business going to and coming from the Horicon road, which formerly, and prior to the summer of 1864, passed over the eastern division.

9th cross-ques. Since the summer of 1864 has not all through business and all the business to or from west of the Minnesota junction and the business going to and coming from the Horicon road been passed over the St. Paul co.'s road in preference to the eastern division?

Answer. Yes, it has whenever practicable.

10th cross-ques. During the time referred to by you, what amount of rolling stock did the St. Paul co. own and operate in addition to the 40 box cars acquired by said co. upon the sale of the western division?

Answer. I can only answer by referring to the report of H. L. Palmer, esq., and the evidence on that subject given before him.

11th cross-ques. If the St. Paul co. should be enjoined from using the rolling stock of the old La Crosse Railroad Company, (except the 40 box cars above referred to,) would that company have sufficient rolling stock to transport its freight and passengers, and would it not divest to the eastern division freight and passengers that now pass over the St. Paul's company's road?

Answer. It would not have sufficient equipment to transport all the business offering; such injunction would have a tendency to throw the Horican business back on the eastern division.

12th cross-ques. Is not the Milwaukee and St. Paul Rail-
238 way Company from the situation of its road rival in interest to the owners of the eastern division?

Answer. Yes, they are rivals between Milwaukee and Portage City.

13th cross-ques. If you were the owner of the eastern division and all the original rolling stock, except the 40 box cars mentioned in the land grant decree, and the St. Paul company owned the roads at present operated by it, would you not concede that your interests were in direct competition with the interests of that company?

Answer. I should as between Milwaukee and Portage City.

14th cross-ques. Conceding that by the law of the State the St. Paul co. are required to receive passengers and freight from the eastern division and transport the same over their road, is not the eastern division, or could it not be made, with proper management and arrangements as to transporting passengers from the Milwaukee depot of the eastern division to the Chicago road, a competition of the St. Paul company for through business from Milwaukee to La Crosse?

Answer. It could, as stated in my answer to third direct interrogatory and be able to make connections at the Minnesota junction north.

15th cross-ques. Do the trains as run over the eastern division up to July 1 make connections at Minnesota junction coming east?

Answer. No, they do not.

16 cross-ques. If you owned the eastern division under the circumstances supposed in the 13th cross-question, and were managing the same with a view to competition with the St. Paul co., would you not arrange so as to make such connections coming east?

Answer. I would I had no regard to cost of operating the road and was running it to compete with the St. Paul company.

17 cross-ques. Upon the theory that all the original rolling stock, except said forty box cars, is a fixture upon the eastern division only, and crediting and charging a reasonable sum for the use of rolling stock upon that theory between the two divisions from the

240 time the receiver took possession to the date of the land grant decree January 13th, 1862, would the western division have had any net earnings during that term of time?

Answ. In my opinion it would not.

18 cross-ques. How long have you been connected with the actual management and operation of the La Crosse railroad, so called?

Answer. From the time the road was first put in operation to July 1, 1865.

19th cross-ques. Conceding that all said original rolling stock, except said 40 box cars, belongs to the eastern division, and considering the present situation of the St. Paul Railway Company, if an injunction were now granted in this cause restraining the St. Paul company from using any of the rolling stock belonging to the eastern division, would not the St. Paul co., in your opinion, be compelled to make some arrangement with the owners of the eastern division, and said rolling stock for the operation of the old La Crosse road and rolling stock as an entirety, or in the case supposed would not the interest of the St. Paul company be subserved, in your opinion, by a just and equitable arrangement of that kind?

Answer. In my opinion, the St. Paul company would be obliged to make an arrangement with the eastern division, or its owners, for the use of their rolling stock, or with some other parties for an additional amount of rolling stock over what they now possess, provided they continued to operate the balance of their line.

20th cross-question. Upon the theory of ownership of rolling stock supposed in the last preceding question, has the St. Paul company sufficient rolling stock to do the through business between Milwaukee and La Crosse as it is doing it at present?

Answer. No, it has not.

21st cross-ques. What is the present financial condition of
241 the St. Paul Railway Company; has it gone to protest, and when and to what amount?

Answer. Its paper went to protest about the middle of May I should estimate to the amount of from one hundred to one hundred and fifty thousand dollars from that time to this.

22d cross-ques. Has said company paid for its supplies and employees on the road for the last six months in cash, or has it issued for that purpose the scrip of the company unsecured?

Answer. It has paid a portion of its dues to employees and for its supplies in cash, and a portion in scrip and a portion is still unpaid.

23d cross-ques. About what proportion in cash and in scrip respectively.

Answer. About $180,000 in scrip; amount in cash and amount unpaid I cannot at this time tell.

EDWIN H. GOODRICH.

UNITED STATES OF AMERICA,
*District of Wisconsin, ss:*

I, James McFarlin, commissioner of the circuit court of the United States for said district, do hereby certify that on the 1st day of

July, 1865, the annexed deposition of Andrew Reasoner was taken by and before me at my office in the city of Milwaukee in said district; that the witness was first sworn to testify the truth, the whole truth, and nothing but the truth; that after being commenced by me the testimony of the witness was reduced to writing by Mr. Jenkins by consent, and under and by my direction in the presence of the witness; that said deposition was taken at the request and on the part of the complainant; that the parties by their respective counsel were present at the taking thereof; that the deposition was read over and signed by said witness on the 13th day of July,
242 1865. I further certify that my fees for taking said deposition is the sum of $3 90; and that I am not of counsel for either of the parties in this suit.

In testimony whereof I have hereto set my hand this 13th day of July, 1865.

JAMES McFARLIN,
*Commissioner Cir. Ct. U. S. Dist. of Wis.*

[Stamp.]

Circuit court of the United States for the district of Wisconsin, in equity.

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| MILWAUKEE AND MINNESOTA RAILROAD Company *vs.* JAMES T. SOUTTER & SHEPHERD KNAPP, survivors of Greene C. Bronson, trustees, William Wallace Pratt, William White, and the Milwaukee and St. Paul Railway Company. | Suit by supplemental bill. |

JULY 1, 1865.

The deposition of Andrew Reasoner, a witness produced on behalf of the complainant, who being duly sworn to speak the truth, the whole truth, and nothing but the truth, in the above-entitled cause, deposed as follows, to wit:

Present, Matt. H. Carpenter, esq., for complainant, and John W Cary, esq., for the defendant, the Milwaukee and St. Paul Railway Company.

1st question. What is your name, age, and where do you reside?

Answer. Name Andrew Reasoner; age, forty-five years; reside in Milwaukee, Wisconsin.

2d question. By whom are you at present employed in Wisconsin, and in what capacity?

Answer. I am employed by the Milwaukee and St. Paul Railway Company as superintendent.

3d question. Are you employed by any other company or person?

Answer. Not to my knowledge; I am not.

4th question. What lines of railroad are now operated in fact by the Milwaukee and St. Paul Railway Co.?

Answer. I don't know of any operated by them except from
243 Milwaukee to La Crosse, being the road from Milwaukee to Portage, known as the eastern division, from Portage to La Crosse, known as the western division, from Milwaukee to Portage by way of Watertown, known as the Watertown division, and the Horicon road, so called.

5th question. Is the Milwaukee and St. Paul Railway Company, in regard to all through business between Milwaukee and La Crosse, being the owner of the Watertown and western divisions, necessarily a rival and competing company to and with the eastern division of said La Crosse road?

Answer. I shouldn't consider that the eastern division was a competing road to La Crosse.

6th question. If the eastern division was owned and operated by parties not interested in the ownership or operation of the Watertown division, could not the owners of the eastern division run passenger trains which would arrive at Portage at the same time the St. Paul company's train arrived there, so that passengers over the eastern division could take the St. Paul company's cars at Portage and go on to La Crosse?

Answer. That would depend a good deal upon circumstances.

7th question. What circumstances?

Answer. If you started early enough you could get there:

8th question. What is the difference in distance from Milwaukee to Portage by the eastern and by the Watertown divisions?

Answer. About four miles in favor of the Watertown division, it being 95 miles by the eastern and 91 miles by the Watertown division.

9th question. How long have you been superintendent of their roads?

Answer. Since May 15th, 1865.

10th question. From what you know of the location of the eastern and Watertown divisions of that road, would not the eastern division if owned and operated by parties not interested in the Watertown division necessarily be a rival road to the Watertown division?

Answer. I should say they would be a rival road for the first ten miles this side of Portage.

11th question. What do you understand to be rival railroads?

Answer. Rival roads are where they start from same point
244 and end at same point, and cut down fares, freights, &c. That I should call a rival business.

12th question. Suppose two companies owned two railroads on the Hudson river from New York to Albany, one on the east side and one on the west side of the river; suppose the length of road and the fare to be the same, would you call these two roads rival roads?

Answer. They are rival roads in one sense.

13th question. What sense?

Answer. In the way of transporting passengers and freight from one point to another.

14th ques. In what other sense are two railroads ever rivals?

Answer. There are different opinions about that.

15th question. What is your opinion?

Answer. My opinion is there is no other rivalry about it.

16th question. If you owned the eastern division of this railroad and Mr. Carey owned the Watertown and western division, and there were no contracts or relations between you, would you not understand that your interests were directly opposed to those of Mr. Cary in regard to through business?

Answer. I should suppose Mr. Cary's interest and my interest would be directly opposed as to business to Portage, and not as to business to La Crosse or St. Paul, if that is what you mean by through business.

17th ques. Do you mean to swear that in the case supposed by the last question it would make no difference with you whether all the passengers from Milwaukee to La Crosse went over your road to Portage, thence to La Crosse by Cary's road; or sent over Mr. Cary's road to Portage and from thence to La Crosse, never touching your road and never paying you a cent of revenue?

Answer. I did'nt swear that.

18th question. What did you swear?

Answer. I swore as to the rivalry between Mr. Cary and myself as to business to Portage.

19th question. Did you not also swear that in the case supposed there would be no rivalry between you and Mr. Cary as to through business from Milwaukee to La Crosse?

244½ Answer. I swore to it. There would be no chance for rivalry between Mr. Cary and myself, because my road stops at Portage; his goes through to La Crosse, consequently I couldn't compete with him.

20th question. In the case supposed, if you offered to carry a man going from Milwaukee to La Crosse as far as Portage for $1 00 less than Cary charged for carrying him from Milwaukee to La Crosse, so that the passenger could go over your road to Portage, then take Cary's train from thence to La Crosse, and save one dollar by having gone over your road, would you call that competition between you and Cary or not for the La Crosse business?

Answer. I should call that competition.

21st question. Are not the eastern and Watertown division capable of this kind of competition? I am not asking whether such competition would be profitable, but am simply asking whether the two roads are so situated as to be capable of competition.

Answer. They are not capable of competition, unless Mr. Cary should hold his trains and give me such accomodations as required when I come to Portage with my passengers and freight.

22d question. Do you mean they are not capable of competition, or do you mean that in such competition Mr. Cary would have greatly the advantage of you? In other words, do you make no distinction between competition and successful competition?

Answer. They are not capable of competition, unless Mr. Cary would take my business, for I have no route beyond Portage.

23d question. Do you know of any two railroads in the world that are competing lines within the conditions which you impose as necessary to constitute competition? If so, please name them.

(The defendant objects to the question as not practical, entirely theoretical, hypothetical, and too far metaphysical to be profitable for the purpose of elucidating truth in this litigation. The complainant's solicitor insists that the question has been constructed with special adaptation to the witness, and is absolute necessary to ascertain what the witness means by his former testimony, since it
245 is evident, from the language heretofore used by the witness, that he entertains some hidden and obscure meaning of the word competition, and there is no hope of bringing him out of theory except to call for examples. The defendant further objects that the question, as well as the explanation of the counsel, is entirely visionary, and as far removed from any practical utility in the investigation before the court, as his theory of competition and rivalry is from any practical or profitable operation or management of the said eastern division.)

Answer. I can't call to my mind, just at present, any two roads situated as these two roads are.

24th question. Can you give any further answer to the last question?

Answer. No.

25th question. As you have sworn that these roads cannot be competing roads, and you know of no other roads which are, we congratulate you on the harmony that must attend railroading in the world, and leave the direct examination here.

1st cross-question by Mr. Cary. What eastern connection at Milwaukee have the railroads centring there?

Answer. One; at the Union depot; the Chicago and Milwaukee road.

2d cross-question. Is there any other railroad connection at Milwaukee?

Answer. Not to my knowledge.

3d cross-question. Does that Chicago and Milwaukee railroad run into the same depot with the Milwaukee and St. Paul railroad?

Answer. It does.

4th cross-question. What is the distance from that depot to the depot of the eastern division.

Answer. About one mile and one-eighth of a mile.

5th cross-ques. Has the eastern division any connection at Portage city except with the St. Paul road?

Answer. No.

The further examination of this witness is adjourned until Monday morning, July 3d, 1865, at 10 o'clock a. m.

None of the parties appeared on the adjourned day, but, by

246 consent, they appeared on the 13th day of July, 1865, and the witness read over his testimony and signed the same.

ANDREW REASONER.

Subscribed and sworn to before me, July 13th, 1865.

JAMES McFARLIN, *U. S. Com.*

United States of America, circuit court, district Wisconsin, in chancery.

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|---|---|
| THE MILWAUKEE & MINNESOTA RAILROAD Company *vs.* JAMES T. SOUTTER *et al.* | Suit by supplemental bill. |
| JAMES T. SOUTTER *et al.*, survivor, *vs.* THE MILWAUKEE AND MINNESOTA RAILROAD Company. | Cross bill. |

Before Francis Bloodgood, examiner in chancery, &c.:

The deposition of Edwin H. Goodrich, taken on behalf of the complainants in the supplemental bill, and the defendants in the cross bill, taken before said exam'r at his office, in the city of Milwaukee, April 13th, 1866.

Present: On behalf of complainants in sup'l bill and def'ts in cross bill, M. H. Carpenter, esq., of counsel; on behalf of def'ts in sup'l bill and compl'ts in cross bill, Jno. W. Carey, of counsel.

Edwin H. Goodrich, being first duly sworn, says:

I was a director of the La Crosse and Milwaukee R. R. Co. from the organization of the company till 1858. I remember the circumstance of the giving of the mortgage to Bronson, Soutter, and Knapp, Sept'r 4th, 1857.

247 Ques. State fully all the circumstances attending its execution, and the reasons for giving it, and at whose request, if at any one's; and everything you know in relation thereto.

Answr. During the year 1857 the co. became embarrassed in its financial affairs. And at the time of the execution of this mortgage, it had several thousand tons of railroad iron on its docks in the city of Milwaukee, and elsewhere, in transit to Milwaukee, and a large amount of personal or movable property of various kinds and descriptions; and for the purpose of securing and keeping possession of the said railroad iron, with which to complete its road from Portage City to La Crosse, and for the purpose of keeping possession of its rolling stock and personal property, as against attachments and executions, the foregoing described mortgage was executed. I have no knowledge of any request ever having been made by the trustees of the land grant mortgage, or any other person outside of the board of directors, for the execution of the mortgage.

Ques. At the time of the execution of this mortgage, and previous

to its execution, was the matter discussed among the directors of the co., as to the necessity for giving this mortgage?

Ans. It was.

Ques. Were the reasons and motives which you have stated above urged among the directors in those discussions for the giving of said mortgage?

Ans. They were.

Ques. Were Bronson, Soutter, or Knapp, or either of them, or any person representing them here in Milwaukee at the time of the execution of the mortgage?

Ans. Not to my knowledge.

Ques. Was the mortgage ever delivered to the trustees, or either of them, or to any person for them, to your knowledge, prior to the year 1859?

Ans. No.

Ques. Were you manager for the Milwaukee and St. Paul Railway Co. in 1864, and until July, 1865.

Ans. I was.

248 Ques. At what time did the co. complete its running connection from Milwaukee to La Crosse by way of Watertown?

Answ. They completed their road between Portage City and Columbus, so as to run trains over it on the 1st Sept'r, 1864, and after that time ran their through trains between La Crosse and Milwaukee by way of Columbus and Watertown, and by way of Brookfield over the Prarie du Chien railway to the city of Milwaukee. On the 1st day of Feb'y, 1865, they completed their own line of road from Brookfield to Milwaukee, and ran their trains between Milwaukee and La Crosse after that time entirely on their own line of road.

Ques. From Sept'r 1, 1864, to July 1, 1865, what, as near as you can state, was the amount of receipts from through business between Milwaukee and La Crosse, done by that co.?

(Objected to as irrelevant, incompetent, and immaterial.)

Answ. A large amount was done. I can't state the amount; it exceeded $100,000; about twenty-five per cent. of this amount was net.

Ques. After Sept'r 1, 1864, did the said co. operate upon its said through line of road the original rolling stock of the La Crosse road and that purchased by the receiver?

Answer. They operated so much of it as was not necessary to use in operating the eastern division.

Ques. After Sept'r 1, 1864, did the co. divert the through business from the eastern division, or was any portion thereof done over the said eastern division?

Answ. They diverted all the through business they could over their own line of road.

Ques. Were the passenger trains which ran over the eastern division run west of Portage?

Answ. They were not.

Ques. After Sep'r 1, 1854, were the western division and the Milwaukee connection by Watertown operated together as an entire road, and was the eastern division operated as road between Milwaukee and Portage only?

Answ. The western division and the connection with Mil-
249 waukee by way of Watertown was operated together as an entire road after Sept'r 1, 1864, and the eastern division of the La Crosse and Milwaukee railroad was operated as a local road between Milwaukee and Portage City.

Ques. Of the rolling stock on the whole La Crosse road, when the receiver took possession, June 11, 1860, what amount, as near as you can state, was purchased, or built, after Sept'r 4, 1857?

Answ. There was purchased, as near as I now recollect, one inferior locomotive, costing about $1,500; five first-class passenger cars, and 16 b'x freight cars.

Cross-examined by Mr. Carey:

This locomotive is now numbered 25, or was the last I know of. I think the receiver paid for it; Chamberlain bought it on credit, and the receiver paid for it, and paid a portion of the price of the passenger cars. The box cars were bought of Haskell, Barker & Aldrich, and were not paid for by the company, and were paid for by Chamberlain out of the earnings of the road, about seven hundred dollars a piece for the box cars.

This eleven thousand tons of iron bo't of Vose, Livingston & Co., was paid for in these land grant bonds; no part of the road from Portage to La Crosse was built at that time; there had been some grubbing and clearing done near Kilbourn City. The value of the bonds were entirely dependent upon the building of the road conveyed by the land grant mortgage, the bonds granted, franchises, &c. This iron was purchased under a written agreement.

I do not know what became of this mortgage of Sept'r 4, 1857, after it was executed; don't remember to have seen it from that time to the present.

EDWIN H. GOODRICH.

Sworn to and subscribed before me, this 13 April, 1866.

FRANCIS BLOODGOOD,
*Exam'r, &c.*

In circuit court in chancery.

250 U. S. AMERICA, *District Wisconsin:*

MILWAUKEE & MINNESOTA R. R. Co. *vs.* JAMES T. SOUTTER *et al.* } Sup'l bill.

JAMES T. SOUTTER *et al.*, survivor, *vs.* MILWAUKEE & MINNESOTA R. R. Co. } Cross bill.

Before F. Bloodgood, examiner, &c.

The deposition of Thos. L. Ogden on behalf of the complainants in the sup'l bill, and the def'ts in the cross bill taken before said exam'r, at his office, Milwaukee, April 14, 1866.

Present, M. H. Carpenter, of counsel for compl'ts in sup'l and

def'ts in cross bill; and John W. Carey, of counsel for the other parties in both suits.

Thomas L. Ogden, being called by the complainant in the said supplemental bill, and duly sworn, testified as follows, viz:

I am solicitor of record for James T. Soutter, survivor, in the 2d mortgage foreclosure cause on the eastern division, and have been since the suit was commenced.

Question. With what counsel have you been in the habit of consulting in and about that foreclosure suit for the last two years?

Answer. I can't say any particular one.

Question. Have you so consulted, from time to time, with John W. Carey, esq.?

Answer. I have.

Question. Did you consult him as counsel in regard to the form of the decree or order of sale in that cause, made Sept'r 28, 1865?

Answer. I did not consult him as counsel. Mr. Carey represented, as I was informed and believe, the second mortgage bonds held by the St. Paul company, amounting in the aggregate to nearly eight hundred dollars. I submitted the decrees, after they were drawn, to Mr. Carey, and consulted with him as to form of the de-
251 cree.

Question. Was he satisfied with the form of the decree, as presented to the court and as signed, in regard to the description of the premises to be sold?

Answer. I have no recollection of any objection that he made to it in this respect.

Cross-examined by Mr. Carey:

Question. Do you recollect that during the whole controversy since the organization of the St. Paul company, that I have always contended when the subject has come up, that all the rolling stock on the road, when the receiver took possession, belonged to the Milwaukee & St. Paul Railway Company under the purchase?

Answer. I have heard you claim that very often, and I have no recollection of your claiming less.

Question. Did I ever, in conversation or consultation with you, advise or request that the order of sale or decree in the said case should be so drawn as to include all the rolling stock except 40 box cars?

Answer. I have no recollection of your ever making such a claim. The interests of the parties you represented, and of the second mortgage bondholders, were antagonistic in this particular, and I should not have listened to any advice which lessened the security of the bondholders.

Question. Did I ever have any control or management of that case?

Answer. No.

Question. Was that description put in the decree including all the rolling stock, except 40 box cars, by the express direction of Mr. Justice Miller?

Answer. That is my impression.

THOMAS L. OGDEN.

Subscribed and sworn to before me, this 14th April, 1866.

FRANCIS BLOODGOOD,
*Examiner in Chancery.*

252 The Milwaukee & Minnesota Railroad Company, on said hearing, further read in evidence a stipulation between the parties as follows:

Circuit court of the United States for the district of Wisconsin, in equity.

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|---|---|
| THE MILWAUKEE & MINNESOTA RAILROAD Company *vs.* JAMES T. SOUTTER *et al.* | Suit by supplemental bill. |
| JAMES T. SOUTTER *et al.* *vs.* THE MILWAUKEE & MINNESOTA RAILROAD Company. | Cross bill. |

In this cause we stipulate that on the hearing of this cause, all the testimony taken before H. L. Palmer, esq., auditor, in the hearings before him which have been held in the second mortgage case, so called, or any part or parts thereof, may be read in evidence on the hearing of this cause, subject to objection and exception as to immateriality and irrelevancy.

MATT. H. CARPENTER,
*Sol. for the Mil. & Minn. R. R. Co.*
JOHN W. CARY,
*Sol. for Def'ts in Sup. Bill and Orators in Cross Bill.*

And under said stipulation said Milwaukee and Minnesota Railroad Company read in evidence the testimony taken before said Palmer, and the exhibits thereto attached, as follows, to wit:

*Note.*

The following exhibits will not be found in this volume, and not being printed can only be examined by referring to the originals on file:

A A. Contract with Chamberlain & Alden.
B B. Ballasting contract.
C C. Contract with Chamberlain.
D D. Contract with Chamberlain.
E E. Resolution of La Crosse & Milwaukee Co.
F F. Contract to build road from Tomah to New Lisbon.
G G. Contract to build road from Tomah to La Crosse.
H H. Resolution June 29th, 1854, Palmer mortgage.
I I. Resolution and by-laws fixing divisions.
Q Q. Maps of part of eastern division.

S S. Iron account.
T T. Contract with Sweeds Iron Co.
U U. Showing manner of payment for rolling stock.
X X. Copies of letters of Bronson, Soutter, and Chamberlain.
O O O. Crocker's bank statement.
P P P. Statement of suits against receiver No. 1.
S S S. Cleveland judgment.
V V V. Petition of receiver for compensation.
W W W. Statement of suits against receiver No. 2.
No. 4. Stipulation putting in land grant record.
No. 5. Stipulation putting in certain orders.
No. 6. Stipulation concerning testimony of R. Sage.
No. 7. Inventory supplies and 13,903 cords wood on the eastern division.
No. 12. J. S. Brown's bill against receiver.
No. 14. Exceptions of Mil. & Minn. Co. to marshal's report of sale.
No. 15. Petition of Mil. & St. Paul Co. for possession, order, and objections.
No. 16. Stipulation that the record of the 2d mortgage and Bouton cases be considered as put in.
No. 17. Record of U. S. Supreme Court in the Howard case.
No. 18. Record of U. S. Supreme Court in the supplemental bill.
No. 21. Cary's answer to supplemental bill.
No. 23. Stipulation allowing Crocker to file exceptions up to 20th June.

253 *Orders of court to H. L. Palmer, esq.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, begun and held according to law, on the third Monday of April, A. D. 1864, at the city of Milwaukee, in said district of Wisconsin, present and presiding Hon. Sam'l F. Miller, associate justice of the Supreme Court U. S., assigned to said circuit, and the Hon. Andrew G. Miller, district judge. On the tenth day of the term, to wit, on the twenty-eighth day of April, A. D. 1864, the following proceedings were had, to wit:

JAMES T. SOUTTER, survivor, &c., *vs.* THE LA CROSSE AND MILWAUKEE Railroad Company *et al.*

This day ordered by the court that the receiver file in this court a continuous monthly account of his receipts and disbursements as receiver from the time of his appointment, including the receipts and disbursements of the Milwaukee and St. Paul Railway Company from the 12th of June, 1863, by the 1st day of

June next, and that any person interested may examine the same and file exceptions thereto, and that H. L. Palmer, esquire, be and is appointed an auditor to report on the same to the next term of this court.

OCTOBER 8, 1864.

It is ordered by the court, now here, that the order made in this cause on the 28th of April, A. D. 1864, requiring the receiver to render account, and referring it to H. L. Palmer, auditor, to report on the same to the present term of this court, be, and the same is hereby, modified as follows:

Ordered, that Hans Crocker, receiver, file in the office of the clerk of this court, on or before the 20th day of November next, a detailed account of his receipts and disbursements as receiver, from the 1st day of June to the 31st day of October, 1864, inclusive; that any of the parties to this cause may, within ten days after such account shall be filed, file exceptions thereto; that such account and the exceptions thereto be referred to the auditor appointed in the said order of the 28th day of April, 1864, to examine and report thereon, in like manner as upon the accounts and exceptions referred by said former order; that the auditor ascertain and report what should be charged for the use of rolling stock formerly used on said railroad, as part of the accounts reported by him; that the auditor ascertain and report what sum should be allowed to the receiver for his services and expenses as receiver, and whether the receiver is subject to any and what contingent liabilities growing out of his receivership, and the amount and nature of each; and
254 and that said auditor report thereon, with all convenient speed and by the first Monday of March, A. D. 1865; that the receiver also file with the clerk of this court, on or before the 20th of March, 1865, an account of his receipts and disbursements as receiver, from the 1st day of October, 1864, to the last day of February, 1865, both inclusive; that any of the parties to this suit may, within five days after such account shall be filed, file exceptions thereto, and that such last mentioned accounts and exceptions thereto be referred to H. L. Palmer, auditor, appointed as aforesaid, to examine and report thereon by the first day of the next April term of this court.

And afterwards, on the 17th day of April, 1865, came the parties by their counsel, and it is ordered by the court, that the order in this cause heretofore made, referring certain matters to H. L. Palmer, esq., be so modified that the said Palmer make report thereto on or before the first day of June next; that any of the parties interrested may except to said reports, or either of them, within fifteen days thereafter, and said report and exceptions shall stand for hearing at the first sitting day of this court thereafter, or soon thereafter as counsel can be heard, and that the testimony before said Palmer shall be closed by the tenth day of May next.

255 Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

Examination of witnesses taken in pursuance and by virtue of an order of reference in the above-entitled cause of the 28th day of April, A. D. 1864.

MONDAY, *August 22d*, 1864.

Present: Henry L. Palmer, auditor; John W. Cary, of counsel for the complainant and the Milwaukee and St. Paul Railway Company; James S. Brown, of counsel for Hans Crocker, esq., receiver; Matt. H. Carpenter, of counsel for the defendants, Alexander Fleming and the Milwaukee and Minnesota Railroad Company.

Edwin H. Goodrich being called as a witness on the part of the defendants, Alexander Fleming and the Milwaukee and Minnesota Railroad Company, and having been previously duly sworn, testifies as follows, viz:

I am manager of the Milwaukee and St. Paul railway, which road is located from Portage City west to La Crosse, and from Prairie Du Chien junction by way of Watertown and Columbus to Portage City, from Watertown to Sun Prairie, and from Horicon to Berlin and Omro.

256 Ques. How long have you been engaged in railroad employment, and in what capacity?

Ans. Have been engaged in railroad business nine years, and for eight years as superintendent and manager.

Ques. How long have you had the actual superintendence of the road from Milwaukee to La Crosse, sometimes called the La Crosse and Milwaukee railroad?

Ans. Since some time in the year 1856. I cannot tell the date of my appointment.

Ques. By whom have you been employed as such?

Ans. By the La Crosse and Milwaukee Railroad Company, by Selah Chamberlain, by Hans Crocker, receiver, by the Milwaukee and St. Paul Railway Company, and by Hans Crocker, receiver, again.

Ques. Are you now in the employment of Hans Crocker, receiver?

Ans. Yes, and have been since the time that Crocker came into possession about the first of May last. I am employed in operating the whole road for the St. Paul company, and by Mr. Crocker for the eastern division.

Ques. Has Hans Crocker, as receiver, been in receipt of the revenues of the eastern division and rolling stock pertaining thereto, since the first day of May last?

Ans. He has either received them or they have been placed to the credit of the eastern division of the L. C. & M. Railroad Conpany on the books of the Milwaukee and St. Paul Railway Company, and monthly statements have been rendered to him of the amount.

Ques. Which is it?

Ans. I don't think he has received any money; it is my impression it has all been credited. No money has been paid to him since the first of May.

Ques. Has Mr. Crocker, as receiver, kept any books in regard to the receipts and disbursements in operating the eastern division since the 1st of May last?

Ans. Not in detail as the business progressed from day to

257 day.

Ques. Have not the disbursements relating to the operating of the eastern division, and the revenues and receipts therefrom in fact been made and received by the Milwaukee and St. Paul Railway Company, and do not the books of the said company purport to contain the same?

(Objected to on the ground that the account rendered, and subject to investigation, is the account to the first day of June, and no item since that date is a proper subject of examination. Objection sustained, so far as it relates to items of account after the 1st of June.)

Ans. The receipts were received and the disbursements were made by the Milwaukee and St. Paul Railway Company, and the books do show that; and monthly statements of the receipts and disbursements have been furnished by this company to the receiver.

Ques. Upon the basis of division of earnings between the eastern and western divisions, adopted by the receiver up to June 13th, 1863, and deducting from the gross receipts of each division only the disbursements properly chargeable to each division for operating the same, without charging either division for the use of rolling stock, what would be the amount of the net revenue belonging to the eastern from the 11th day of June, 1860, to the 13th day of January, 1862, and what to the western division?

Adjourned to the 23d inst. at 10 a. m.

AUGUST 23D, 1864, 10 o'clock a. m.

Parties present as before, and the examination of Edwin H. Goodrich continued.

Ans. $566,545 07 to the eastern division, and the amount belonging to the western division for the same time would be $113,666 32. Exhibit F is the statement showing these amounts and the division.

Ques. If from the gross receipts of the several divisions you deduct the expenses for operating the same respectively, does the result show what railroad men call the net earnings of the several divisions?

Ans. Yes, it does.

258 Ques. Conceding that of all the rolling stock on the whole road on the 11th day of June, 1860, except the 40 box cars specially described by numbers belonging to the eastern division, what

would be a reasonable charge to the western division for the use of rolling stock, as the same has in fact been used thereon for the three following terms of time, viz:

1. From June 11th, 1860, to January 13th, 1862.
2. From January 13th, 1862, to May 7th, 1863.
3. From May 7th, 1863, to June 1st, 1864?

Ans.—

FOR THE FIRST PERIOD OF TIME.

| | | |
|---|---|---|
| For the use of locomotives | 15 | cents per mile. |
| For the use of passenger cars | 2 | " " |
| For the use of baggage and mail cars | 2 | " " |
| For the use of freight cars | 1 | " " |

FOR THE SECOND PERIOD OF TIME.

| | | |
|---|---|---|
| For the use of locomotives | 20 | cents per mile. |
| For the use of passenger cars | 4 | " " |
| For the use of baggage and mail cars | 2 | " " |
| For the use of freight cars | 1 | " " |

FOR THE THIRD PERIOD OF TIME.

| | | |
|---|---|---|
| For the use of locomotives | 25 | cents per mile. |
| For the use of passenger cars | 5 | " " |
| For the use of baggage and mail cars | 3 | " " |
| For the use of freight cars | 2 | " " |

(Mr. Brown objected in due time to the foregoing question and answer, because it has no relevancy to the matter of accounts submitted to the auditor for examination, and the answer of the witness was taken, subject to such objection.)

Ques. Can you furnish to the auditor a statement showing how much should be charged to the western division for the use of rolling stock during the said three terms of time, at the several rates given by you in your last answer, and upon the basis mentioned in the foregoing questions?

(Objected to for the same reason as above, and the objection overruled.)

259 Ans. I cannot furnish a statement that would be absolutely correct of the mileages of engines and cars on the western division, but can furnish one that would approximate to correctness, and be very nearly correct.

Ques. Is there any other person, who, from his connection with the operation of the road, could probably give the information called for by the foregoing question more accurately than you can?

Ans. I don't know that there is. I should not do it myself, but through various clerks in the office. I can furnish all the information that can be furnished on the subject.

Direct examination of this witness is here suspended.

Dwight W. Keyes was called and duly sworn:

Ques. Are you in the employment of the Milwaukee and St. Paul Railway Company? and if so, in what capacity?

Ans. I am, and keep the general books of that company.

Ques. Look at statement Exhibit E, before the auditor, item No. 38, and state of what items that charge is composed?

Ans. It is made up of the following:

| | |
|---|---|
| Paid Crocker, receiver, April 23, 1864 | $68,285 50 |
| Charge for the earnings of the western division from June 1st to June 12th, 1863, inclusive | 20,761 17 |
| Mileage on western division from April 25th to May 1st, 1863, inclusive | 2,396 48 |
| Same from May 1st, to June 1st, 1863 | 11,958 02 |
| Same from June 1st to June 12th, 1863 | 4,672 79 |
| Advance charges on goods in transit, June 13th, 1863 | 1,886 86 |
| Total | 109,950 82 |

Ques. Can you furnish the auditor a statement of the receipts and disbursements for the months of April and May, 1863?

Ans. Yes, sir.

Ques. Can you make a statement of the items composing the charge of $41,675 22 in the receiver's report mentioned, and also the item of twenty-nine thousand and odd dollars?

Ans. I can.

260 Adjourned to 2 o'clock p. m.

AUGUST 23, 1864.

D. W. Keyes, continued:

The item mentioned in the last preceding question is an entry of $29,157 45, and is made up of the folowing:

| | |
|---|---|
| Net earnings of western division from April 25th, to April 30th, 1863, both inclusive | $4,608 58 |
| And net earnings of western division from May 1st to May 31st, 1863, both inclusive | 24,548 87 |

This is net earnings without any charge for use of rolling stock. Exhibit G is a copy of the voucher taken by the receiver therefor.

Ques. Can you furnish a statement of the receipts and disbursements for the months of April and May, 1864?

Ans. Yes, I have them here. Exhibit H is a statement of the receipts and disbursements of the eastern division for the month of April, 1864, and the paper now produced and marked Exhibit I is a similar statement of the receipt and disbursements of the eastern division for the month of May, 1864.

Adjourned to 25th August, at 10 o'clock a. m.

AUGUST 25TH, 1864, 10 a. m.

Present, parties as before. Mr. Brown moves, on behalf of the receiver, that all testimony as to the relative rights of parties to the

suit, and others to the earnings of the road be excluded, and that the investigation by the auditor be hereafter limited to ascertaining the correctness or incorrectness of the accounts of the receiver as rendered up to June 1st, 1864.

Mr. Cary, on behalf of the complainant in this case, moves to exexclude all testimony relating to the relative rights of the eastern and western divisions of the road, in the fund arising from the operation of the road since the appointment of the receiver; also all testimony relating to moneys which the receiver might or ought to have had in his hands, which is not now or has not been in his hands, and that the investigation be confined to ascertaining the actual amount of money now in his hands, subject to the order of the court, which may be applicable to the payment of interest on the mortgage on this suit.

Argued by Mr. Brown and Mr. Cary for the motion, and Mr. Carpenter opposed. The motion was overruled and exceptions taken by Messrs. Brown and Cary.

261 Adjourned to September 2d, 1864, at 10 o'clock a. m.

SEPTEMBER 2D, 1864, 10 o'clock a. m.

Parties present. On motion made in behalf of the Milwaukee & Minnesota Railroad Company, and the reason of the absence of Messrs. Carpenter and Cary, and Mr. Brown, on behalf of the receiver, objected thereto.

Adjourned to September 3d, 1864, at 10 o'clock a. m.

SEPTEMBER 3D, 1864, 10 a. m.

Parties present as before. The examination of D. W. Keyes suspended.

Edwin H. Goodrich recalled:

Ques. Have you prepared any of the statements, as requested? If so, will you produce them, and explain the contents thereof?

Ans. I have not prepared any of the statements, and on examination I find it impracticable and impossible to do, except a statement of the division of the rolling stock purchased by the receiver, in proportion to the net earnings of the eastern and western divisions respectively, from June 11th, 1860, to January 13th, 1862. The reason why I cannot make the statement of the mileage of all the different kind of rolling stock is that the system of accounts never contemplated any such statement being called for. When making my answer that I could do so, I supposed that our book of train reports would furnish the necessary data, but on examination I find that it does not.

Ques. What was the amount of rolling stock purchased by the receiver, by cost price, from June 11th, 1860, to January 13th, 1862?

Ans. $147,985 99 up to January 1st, 1862; during the month of January about $700 was charged to that account.

Ques. Of this amount, separating between the eastern and western

divisions upon the basis of their respective net earnings from June 11th, 1860, to January 13th, 1862, as stated by you, what amount would belong to the eastern, and what amount to the western division?

| | |
|---|---|
| Ans. Eastern division | $121,787 |
| Western division | 26,199 |

262 Ques. Have the books and accounts of the receiver been so kept that an approximation can be made as to what should be charged to the western division for the use of the rolling stock, upon the basis and during the terms of time submitted to you in the former question upon this subject?

Ans. The books of account show nothing whatever in regard to the movement of rolling stock. The only data we have for ascertaining the movement of rolling stock during the periods mentioned are the time tables then in force, and a book kept showing the movements of trains. From those a statement of the number of trains run can be made, but the number of cars of each description cannot be ascertained.

Ques. Can you make and furnish to the auditor here a statement which will approximate to the result desired, and in which you can, by resolving all doubts in favor of the western division, be sure that your statement is not injurious to that division?

Ans. I would not attempt to make one from any data I have.

Ques. Is there any person who can testify with more certainty than you can upon upon this subject; or is there any source from which we can obtain any more definite information upon the subject than you are able to testify to and furnish to us?

Ans. I don't know of any person who can testify with any more certainty than I can upon that subject, and I don't know of any sources, other than those named, from which information can be gained. And any person familiar with *with* railroad accounts is as capable of making an approximate statement as I am, he having access to the data in our possession.

Ques. From your general knowledge of the condition of the whole road, the manner in which the two divisions have been operated, and the use of the rolling stock upon the two divisions, and calling the whole rolling, on the road when the receiver was appointed, worth $ , what percentage upon this amount, in your opinion, would be a fair and equitable rent or compensation for the use of said rolling stock upon the western division, assuming that all of it, except the forty box cars described by numbers in the land
263 grant deed, belonged to the eastern division from the 11th of June, 1860, to the 13th of January, 1862?

Ans. I have never given the subject any consideration, and cannot answer the question.

Ques. Upon the basis aforesaid, and for the time last aforesaid, ought the western division, in your opinion, to pay anything for such use of rolling stock?

Ans. During the period mentioned, competition with the lower roads was strong, and this road was running to establish itself as a through route, and both freight and passengers were transported at a loss to the company in competition with the lower roads, for the purpose of establishing itself as the through route to the northwest, and in my opinion the western division should not be chargeable with any considerable sum for the use of rolling stock.

Ques. Was not the western division as much interested as the eastern division in having the reputation of this road established as a through route?

Ans. Yes.

Ques. Aside from the circumstance mentioned by you, and supposing the two divisions to have been separate and independent roads, and that the eastern division had leased to the western division the whole amount of rolling stock on the road on the 11th of June, 1860, except the said 40 box cars, what percentage upon the cost price would be a fair compensation for the use of the same, as it was used upon the western division from June 11th, 1860, to January 13th, 1862?

(Objected to by Mr. Cary as hypothetical, theoretical, and immaterial. Answer taken subject to the objection.)

Adjourned to 2 o'clock p. m.

Ans. In my opinion it would be worth, for the amount used, the cost of keeping it in repair, and 15 per cent. per annum of the cost of the property, provided a fair compensation is paid by the eastern division to the western for the business brought to the eastern division by the use of that stock.

(Mr. Carpenter here moved to strike the proviso out, as not responsive to the question and irrelevant.

264 Overruled and exception taken.)

Ques. Upon the same basis and conditions, what percentage would be such compensation from January 13th, 1862, to May 7th, 1863?

Ans. It would be the same per cent. on the same value of the stock, and the same would be true of all the different periods down to June 1st, 1864.

Ques. Of the rolling stock on the road when the receiver was appointed, was it was worth more from January 13th, 1862, to May 7th, 1863, than from June 11th, 1860, to January 13th, 1862? If so, about what per cent?

Ans. I should say it was worth twenty-five per cent. more, present depreciated currency being the standard of value.

Ques. What per cent. was it worth more from May 7th, 1863, to June 1st, 1864, than from June 11th, 1860, to January 13th, 1862?

Ans. Fifty per cent. on same standard of value.

Ques. From June 11th, 1860, to January 13th, 1862, what were the local earnings of the eastern division, and what of the western division?

Ans. I cannot give those sums. The books of account have not been kept so as to show it. It can be picked out.

Ques. Were the local earnings proper, of the eastern division, greater or less than those of the western division, during that time?

Ans. They were greater.

Ques. About what proportion?

Ans. About two and a half to one. This is mere guess-work. That is the best of my judgment.

Ques. How was this, from January 13th, 1862, to May 7th, 1863?

Ans. My answer to the previous question was intended to cover the whole time, from June 11th, 1860, to June 1st, 1864.

Ques. Which would be more valuable, the western division, from La Crosse to Portage, without connections from Portage east, or the eastern division, from Portage to Milwaukee, without connection from Portage west?

265 (Objected to as immaterial. Objection overruled and exception taken.)

Ans. The eastern division would be most valuable.

Ques. Which division has it cost most per mile to operate, taking the year together?

Ans. It has cost more to operate the eastern division.

Ques. How, and why is this?

Ans. Because a greater number of trains have been run, and more business done on the eastern division.

Ques. Which division has it cost the greatest percentage upon its earnings to operate since the receiver was appointed?

(Objected to as immaterial. The objection overruled and exception taken.)

Ans. The western division.

Ques. Does the item of sixty thousand dollars in the account filed in court, in the April term, 1864, enter into the item of $89,658 23, rendered in the account of the St. Paul company, in the item as "renewal of track," being item No. 27 of the account marked Exhibit E?

Ans. Assuming that the account shown to me is a copy of the account filed by the receiver, the item of $60,000 "for rolling iron rails" was an estimated amount of liabilities assumed by the Milwaukee and St. Paul Railway Company on account of the eastern division, and any amount paid for rolling iron rails subsequent to the 4th of April, 1864, and prior to the 30th of June, 1864, enter into and makes a part of the sum of $89,658 23.

Ques. Had any portion of that $60,000 been expended by the receiver, or by the M. & St. Paul Railway Company, prior to the rendering of the account to the court in the April term, 1864? If so, what amount?

Ans. None of it had been expended. It was, as I stated before, an estimated amount for that purpose. In the spring of 1864 arrangements were made with the Chicago Rolling Mill Company by the Milwaukee and St. Paul Railway Company for rolling two thous-

266 and tons of rails for the eastern division, and it was estimated that it would cost about $40 per ton. Previous to the April term of the United States court in 1864 about five hundred

tons of rails had been rolled and paid for; and the sum of $60,000, stated in the account was estimated to be the amount for which the Milwaukee and St. Paul Railway Company was liable to the Chicago Rolling Mill Company for the work then yet to be performed under the engagement.

Ques. Had any amount; if so, what amount, been paid prior to the filing of that account at the April term, 1864, for rolling iron under that contract?

Ans. Yes, about $20,000, more or less.

Ques. How much has been expended since the rendering of that account for rolling iron under that contract; and when?

Ans. About $22,000, and the money has been expended as fast as we could cause the work to be performed.

Ques. By whose direction, procurement or request, was that contract made for rolling iron?

Ans. It was made by the request and assent of all parties interested, and was a matter of necessity. I mean by all parties interested, the St. Paul company and the receiver.

Ques. How long after the contract was made before the receiver had knowledge of it?

Ans. It is my impression he had knowledge of it at the time. It was talked of by the engineers.

Ques. Has all the iron that has been rolled and paid for under that contract been laid down upon the eastern division?

Ans. It has, up to the 31st day of August, 1864. Since that date, about forty-two tons of rails rolled under that agreement have been received and used on the Milwaukee and St. Paul Railway Company's road, west of Portage City.

Ques. What is that iron—received since August 31st, 1864, and used on the western division— worth per ton?

(Objected to as immaterial.)

Ans. (Taken subject to objection.) Worth about one hundred and twenty-five dollars per ton.

Adjourned the examination to Monday, Sept. 5th, 1864, at 9 o'clock a. m.

267 SEPTEMBER 5TH, 1864, 9 a. m.

Parties present as before.

Edwin H. Goodrich's examination continued:

Ques. What is the value of the repair shops in Milwaukee, pertaining to the road, including machinery, tools, and other things appurtenant to or used with them?

Ans. Fifty thousand dollars, I suppose.

Ques. How much has been expended on that property since the receiver was appointed?

Ans. I should judge fifteen or twenty thousand dollars, but don't know precisely. The amount can be ascertained; that is, the amount expended chargeable to the eastern division.

Ques. Item No. 28 of Exhibit E is a charge "for new buildings

$27,497 84." Where are those new buildings, what are they, and by what authority were they constructed?

Ans. That item embraces the new buildings erected on the machine shop grounds in Milwaukee, depot buildings at Portage City, extension of depot buildings, erection of water houses, and other improvements on the eastern division. There was no authority from the court for these erections, except the general order of the court, and the necessities of the road.

(The latter branch of the answer is objected to as not being responsive to the question. Question reserved.)

Ques. How much of this sum was laid out upon the depot building at Portage?

Ans. Between $3,000 and $4,000.

Ques. Have all the amounts charged in the various items of account, marked "Exhibit E," actually and in fact been expended, and were they so expended before the account was rendered to the auditor, or does any item include any and what amount reserved or held for future disbursements, or as indemnity for any real or supposed liability, as the said $60,000 item was reserved in the account rendered to the court at the April term, 1864?

Ans. All the items charged in Exhibit E have been actually expended, and were expended before the account was presented to the auditor, or have been paid out since. They were all then
268 entered on the books to the credit of the parties, and the statement does not show any sum held or reserved for future disbursements or liabilities, as was the case with the said item of $60,000.

Ques. Has all the iron re-rolled and paid for under the arrangement spoken of by you before actually been laid down upon the eastern division, except that which you testified had been laid down upon the western division?

Ans. It has all been delivered upon the eastern division, and has all been laid down except fifty or one hundred tons, which is now being laid.

Ques. Has the two thousand tons of iron provided for in that arrangement been fully paid for, so as regards the account against the eastern division?

Ans. It has not been fully paid for, because the 2,000 tons have not been re-rolled.

Ques. In the account rendered to the court at the April term, 1864, there was an item of $60,000 reserved for this rolling of iron; you now say that about $22,000 has since been paid on that account. Now, does the balance of $38,000 continue in the hands of the St. Paul company for future disbursement?

Ans. The balance of $38,000 has not been expended.

Ques. Is that $38,000 included in the item No. 40, on account marked Exhibit E?

Ans. It is not in that item, nor in any other item on Exhibit E.

(This question and answer are objected to by Mr. Brown for the reason that there is no charge for this $60,000 for rolling iron in the

account of the receiver under examination. The only charge on this account being for the amount actually expended for re-rolling iron.)

Ques. Won't you explain, so that it can be comprehended by even a lawyer, how and when the eastern division gets the benefit of the $38,000, balance of the $60,000 shown in the account rendered to the court at the April term, 1864?

Ans. I have answered previously that the sum of $60,000 was an estimated liability of the Milwaukee and St. Paul company, on account of the eastern division, also that $22,000 of that amount,
269 or about that sum, has since been expended on account of rolling iron for said division. The eastern division will not get the benefit of the $38,000 balance, because it forms no part of the receipts or disbursements.

Ques. Item 39, of account marked Exhibit E, is "for use of rolling stock, $166,192 30." Will you state what rolling stock is charged for the use of, the rates of charging, and the mileage therein? State fully, and explain the whole basis of that charge, showing the rolling stock is assumed to be divided, and all the bases or principles on which the charge is made?

Ans. The Milwaukee and St. Paul company claims to own twenty-three engines, and fifty-two and a half (52½) per cent. of eight engines, the latter purchased by the receiver, or eighty-seven and one half (87½) per cent. of the whole number of engines. It also claims to own two hundred and four (204) box cars or freight cars, and fifty-two and one half (52½) per cent. of two hundred and forty-four (244) freight cars, the latter purchased by the receiver, or seventy-four (74) per cent of the whole; and also seventeen (17) passenger cars, and fifty-two and one half (52½) per cent. of two passenger cars, placed on the road by the receiver, or ninety-five (95) per cent. of the whole; also twelve (12) mail and baggage, six (6) caboose, and seventy-six (76) platform cars, and for the proportion of the rolling stock used on the eastern division, the eastern division is charged in the proportions stated above at the following rates: From June 13th, 1863, to February 1st, 1864, locomotives, twenty (20) cents per mile, passenger cars, four (4) cents per mile, baggage and mail cars, two (2) cents per mile, freight cars, one (1) cent per mile, platform and caboose cars, one (1) cent per mile.

From February 1st, 1864, to June 1st, 1864, locomotives, twenty-five (25) cents per mile, passenger cars five (5) cents per mile, baggage and mail cars, four (4) cents per mile, freight, platform, and caboose cars two (2) cents per mile. The schedule hereto annexed, marked Exhibit K. is a statement of the amount of inventory of the material on the eastern division at the date therein mentioned, and the eastern division is credited with its proportion, and on the western division at the same rates.

Ques. Was all this rolling stock, the use of which is charged for in this item, on the road when the receiver was appointed
270 and took possession June 11th, 1860, except that which you specify above as having been procured or purchased by the receiver?

Ans. Yes.

Ques. During this time in which you have kept a mileage account to charge the eastern division upon the basis of an arbitrary division of rolling stock made by yourselves, have you also a mileage account which can be used to charge the western division for the use of rolling stock, if the auditor or court should hold that all the rolling stock, except the forty (40) box cars, belonged and belongs to the eastern division?

(Objected to by Mr. Cary, for the reason that it assumes that there has been an arbitrary division of rolling stock. Overruled and exception taken.)

Ans. We have such an account if the data has been preserved, from which that account was made up, and I presume it has.

Ques. Can you, and will you, and within what time will you furnish such statement to the auditor?

Ans. I think I can, I think I will, and I will undertake to have it done in three days.

Ques. What would be a proper rent for the use of the repair shops, blacksmith shops, &c., at Milwaukee, from June 13th, 1863, to June 1st, 1864, as the same were used by the St. Paul company, including tools, machinery, and everything appurtenant to the shops?

Ans. Ten per cent. upon the valuation over and above the expense of keeping the tools and machinery in repair.

Ques. About what amount in value of supplies in and about the workshops on the eastern division, did the St. Paul company take possession of, on or about the 12th of June, 1863?

Ans. About $125,000. That is as near as I can recollect about it.

Ques. Has any charge been made in any of these accounts against the St. Paul company for any of these supplies?

Ans. There has not. There is no charge against the St. Paul company for any of the supplies on hand.

Ques. Have those supplies, on hand when the St. Paul company took possession, been used up by it?

Ans. They have been used as required from time to time.

271 Ques. What would it cost now to replace the same supplies, which you say were worth about $125,000 when the company took possession?

Ans. It would cost about the same proportion that the value of currency bears to the value of gold.

Ques. Would it cost twice as much to replace it now as you say it was worth then, or what greater or less proportionate amount?

Ans. Some articles would cost one quarter more than they were worth then, others one-half, others three-quarters, others double, and some even greater than that.

Ques. Would two hundred and fifty thousand dollars, in your opinion, replace the supplies as they were when the St. Paul company took possession of them, or what other sum would?

Ans. I think two hundred and fifty thousand dollars would furnish supplies.

Ques. Item 38 of Account E is "Milwaukee and St. Paul Railway Company, $109,950 82." Will you state of what particulars that item is composed?

| | |
|---|---|
| Ans. Earnings of the western division, collected by the receiver from June 1st to June 13th, 1863 | $20,761 17 |
| Mileage of engines and cars from April 25th to June 13th, 1863 | 19,027 27 |
| Cash paid advance on freights received for shipment prior to June 13th, 1863 | 1,886 86 |
| Cash April, 1864 | 68,285 50 |
| Total | 109,950 82 |

This item for rolling stock is made up on the same basis as the charge for rolling stock above mentioned, as I have explained above.

Adjourned to Thursday morning, 8th of Sept., at 9 a. m.

SEPTEMBER 8TH, 1864.

Ques. I see by referring to the auditor's notes of your testimony that you have made several changes in your answer, the first being in regard to the rent of rolling stock on the western division, and the amended answer is no answer to the question. I now repeat the question, and ask what per cent. upon the whole amount in
272 value of rolling stock on the road June 11th, 1860, except the said forty box cars, would be a proper compensation for the use of the rolling stock on the western division, as the same was used then from June 11th, 1860, to January 13th, 1862, upon the basis included in the original question?

Ans. In my opinion, it would be worth for the amount used the cost of keeping it in repair, and fifteen per cent. per annum of the cost of the property, provided a fair compensation is paid by the eastern division to the western division for the business brought to the eastern division by the use of that stock.

Ques. Upon the basis above stated, in your opinion and best judgment, what percentage of the rolling stock which was on the road June 11th, 1860, was used upon the western division from June 11th, 1860, to January 13th, 1862?

Ans. I would guess that there was thirty per cent. of it.

Ques. What percentage thereof from January 13th, 1862, to May 7th, 1863?

Ans. I guess from thirty-five to forty per cent.; say thirty-five per cent.

Ques. And what per cent. from May 1st, 1863, to June 1st, 1864?

Ans. Forty per cent. The foregoing proportions are the proportions of said stock that were actually in use during those periods.

Ques. Taking the whole time from June 11th, 1860, to January 13th, 1862, state, to the best of your judgment and opinion as to what per centage of the whole rolling stock was in use upon the whole road.

Ans. For six months in each year during that period of time the whole of the rolling stock was employed; during the remaining six months in each year from forty to fifty per cent. was employed.

Ques. Thanking you for the information voluntarily given, will you please answer the question last put, namely: During the whole time from June 11th, 1860, to January 13th, 1862, according to the best of your judgment and belief, what percentage of the whole rolling stock was in use upon the whole road?

(Mr. Brown objected to the question on the ground that it
273 had been answered, and is unfair and disrespectful to the witness. Objection overruled, and exception noted.)

Ans. Not putting you under any obligation for the answer given, I cannot answer the question more definitely than I answered it before.

Ques. What six months in each year during that period was the whole rolling stock employed, as stated by you?

Ans. During the months of April, May, and June, and September, October, and November, and the balance of each year, the proportion stated, from forty to fifty per cent. of it.

Ques. Does this last answer also apply to the whole time from January 13th, 1862, to January 1st, 1864?

Ans. Yes.

Ques. To your answer as to the value of rolling stock you have added the words "present depreciated currency being the standard of value." By this do you mean United States paper currency?

Ans. When the rolling stock was purchased it was at a time when currency and coin were of equal value. At the present time, taking coin as the standard of value, United States and State currency is worth about forty per cent. of its representative value. That is the kind of currency of which I speak.

Ques. Since June 11th, 1860, about how much in coin has been received by the receiver from the operation of this road?

Ans. I have no means of knowing, but should estimate the amount at $5,000.

Ques. Have not the receipts and disbursements and operations of the road been almost exclusively in and carried on by this depreciated currency?

(Objected to by Mr. Brown on the ground that by the laws of the United States the legal tender notes are the standard of value, and the difference between gold and paper does not, in law, represent a depreciation, and the question assuming as a fact that it does. Objection overruled, and exception taken.)

Ans. The operations of the road have been almost exclusively carried on in currency since June 11th, 1860; but during some portion of that time coin and currency have been nearer of equal value than they are at present.

274 Ques. What time?

(Objected to as wholly immaterial and irrelevant. Overruled, and exception taken.)

Ans. I can't give data as to gold quotations and differences of value.

Ques. Did you make your former estimate as to the value of this rolling stock in different periods upon the basis of the difference

between the value of coin and this currency in those periods respectively?

Ans. I did.

Ques. In the notes of your answer to a former question as to said $60,000, when you said that the sum of $60,000 was withheld as an estimated liability, &c., you have erased the words "withheld as." Was not this sum of $60,000 kept back or withheld by the St. Paul company from the receiver, at the time the account was made up which was rendered to the April term, 1864?

Ans. I have attempted to explain, in every answer that I have made in reference to the $60,000, that it was an imaginary amount for which the St. Paul company was liable, and that said sum of $60,000 does not appear upon the books of the Milwaukee and St. Paul Railway Company, and that the exhibit marked E contains a true statement of all the receipts and disbursements on account of the eastern division, between the dates appearing at the head of the account, and that the balance, as shown on that exhibit, was the balance due the eastern division on the 30th day of June, 1864, according to the best of my knowledge, information, and belief, and I know of no other sum or sums due said division for that period of time.

Mr. Carpenter moved to strike this answer out, as not responsive to the question.

On motion the question reserved.

Ques. Did not the Milwaukee and St. Paul Railway Company pay to Hans Crocker, the receiver, about April 1st, 1864, the sum of $68,285 20?

Ans. They did, and it is charged in account on the paper marked Exhibit E.

Ques. Was not the sum arrived at, at that time, by deduct-
275 ing from the moneys admitted by the company to be in its hands belonging to the eastern division, among other items, this item of $60,000, as shown in the account rendered to the April term, 1864?

Ans. The sum of $68,285 20 was arrived at by the president of the Milwaukee and St. Paul Railway Company and the receiver, and the said sum of $68,285 20 was a payment on account of the amount due the eastern division, against the credits as shown in Exhibit E.

Ques. Did they know at the time this sum was arrived at the fact, as you have stated therein in your testimony, in regard to the $60,000?

Ans. The receiver had an opportunity at all times of knowing the exact state of the accounts, and I presume he knew at that time, but cannot state whether he knew it or not. The books of the St. Paul Company were always open to him for examination, as to the operations of the eastern division.

Ques. Did the receiver at that time know that no part of that $60,000 had then been actually paid out by the St. Paul company?

Ans. I think he did.

Ques. Was not this account, which was rendered to the court by

the receiver at the April term, 1864, and which shows this balance of $68,285 20, made out and furnished to the receiver at that time by the St. Paul company?

Ans. I don't think it was.

Ques. How, why, and for what was that money paid?

Ans. It was paid by check and on account, as I have before stated.

Ques. If that was not a settlement or balance arrived at at that time, why was that precise sum, so many dollars and so many cents, paid at that time?

Ans. I cannot answer that question otherwise than to say, that that was a sum arrived at by those gentlemen at that time. There has been no settlement of account on the books of the company.

Ques. Assuming that this account rendered to the April term, 1864, by the receiver, is as follows:

276 Milwaukee & St. Paul Railway Co.,
In acc't with Hans Crocker, receiver.

DR.

| | |
|---|---|
| To gross earnings of the eastern division of the La Crosse & Milwaukee railroad, from June 13th, 1863, to April 1st, 1864, 9 months and 17 days | $688,665 86 |

CR.

| | |
|---|---|
| By operating expenses, including use of rolling stock of Milwaukee & St. Paul Railway Co. | 452,452 05 |
| | 236,214 81 |

DR.

| | | |
|---|---|---|
| To amt. due by receiver to Milwaukee & St. Paul Railway Company, for money received by him for operation of western division from April 25, 1863, to June 13, 1863, and for back charges, paid for receiver | $41,675 32 | |
| Materials purchased for the E. div | 28,620 63 | |
| Paid for rolling iron rails | 60,000 00 | |
| 200 tons iron rails purchased | 23,000 00 | |
| State taxes | 14,633 66 | 167,929 61 |
| Balance | | 68,285 20 |

Was not the item of $60,000, or that amount, withheld or received by the St. Paul company at the time that account was rendered to the court at the April term, 1864?

Ans. I don't know anything about that account; nothing of that kind appears on the books of this company.

Ques. Was not the real amount of money in the hands of the St. Paul company, at the time that account was made up, $128,285 20, or about that sum?

Ans. If a statement of account has been made from the books of the Milwaukee & St. Paul Railway Company, at the time this account was filed, such account would have shown a balance due the eastern division equal to the amount of $128,285 20.

Ques. Would it have shown any greater amount, and what amount?

277 Ans. I cannot state precisely, but it would have shown about that amount in my opinion.

Ques. From the appointment of the receiver to the 13th of June, 1863, what rates were charged to the Horicon railroad for business done for it?

Ans. We gave the Horicon road a drawback during a portion of that time of thirty per cent. of our rate, between Horicon and Milwaukee. During another portion of the time we divided the way bills, giving to that road one-half, and taking one-half ourselves, between all points on that road and Milwaukee; and since June 11th, 1863, the Milwaukee & Horicon railroad's proportion has been seventy per cent. of the through rate, and the proportion of the eastern division of the La Crosse & Milwaukee railroad was thirty per cent., except upon passenger business, which has always remained substantially as it was in the original contract.

Ques. Has the eastern division received a less percentage for the business it has done for the Horicon road since June 13, 1863, than formerly?

Ans. It has.

Ques. About what per cent. less?

Ans. The difference between fifty per cent. and seventy per cent. on freight.

Ques. Since June 13, 1863, what has been received from, or charged to, the Horicon road for freights?

Ans. I will undertake to ascertain it. I cannot tell it now.

Ques. Was the eating-house at Portage built and paid for from the earnings of the eastern division?

Ans. It was not.

Ques. By whom was it built?

Ans. It was built by the Milwaukee & St. Paul Railway Company.

Ques. Was any part of the expenses of building it embraced in any of the items of the account marked Exhibit E?

Ans. No.

Ques. On which division of the road is it situated?

Ans. As I understand it, it is situated on the western division.

278 Ques. Is it east or west of the Portage depot?

Ans. East.

Ques. Does not the eastern division terminate west of the Portage depot?

Ans. As I understand it, it does not.

Ques. Why do you preface these answers by "as I understand it?" Do others understand it differently?

Ans. I understand the eastern division to extend to Portage City, and to be ninety-five miles in length; others may understand it differently. I have heard the point disputed.

Ques. While the eastern division was being constructed, was it not understood by the officers, employees, and contractors of the La Crosse & Milwaukee Railroad Company that the said eastern division extended to a point west of the present site of the Portage depot, and that from Milwaukee to that point was ninety-five miles?

(Objected to for the reason that the eastern division, for the purposes of this suit, is fixed by the terms of the mortgages to Palmer and to the complainants in this case, which is to Portage City, a distance of ninety-five miles from Milwaukee, and that the understanding of the officers, employees, and contractors could not vary it, or have any influence upon it. Overruled and exception taken.)

Ans. At the time of fixing of the divisions, by order of the board of directors in October, 1856, it was understood that the eastern division terminated at a point where the Portage division intersected the line from Milwaukee to La Crosse. That point is near the canal bridge, and east of the depot. Reference is made to plats on file in the office of the Secretary of State, for the precise point.

The line from Beaver Dam to Portage City was under contract and substantially constructed before the road was divided into divisions by any act or resolution of the board of directors that I know or recollect of. It was generally understood that the distance from Milwaukee to the Portage City station was about ninety-five miles, that is, ninety-five miles of main track.

Adjourned to 2 o'clock.

Ques. Under what contracts were the eastern and western divisions respectively constructed?

279 Ans. Several contracts were made previous to the Cleveland contract, for the construction of portions of the road east of Rock river. The Cleveland contract was made after the forfeiture of other contracts, extending to Rock river. After the forfeiting and disposal of other contracts, a contract was made with Selah Chamberlain and S. H. Alden, a copy of which is hereto annexed and marked Exhibit A A. Then a contract was made with Selah Chamberlain, a copy of which is hereto annexed and marked Exhibit B B. Subsequently a contract was made with Selah Chamberlain, a copy of which is hereto annexed and marked Exhibit C C. A supplementary agreement was entered into with Selah Chamberlain, a copy of which is hereto annexed and marked Exhibit D D. A further contract was entered into with Selah Chamberlain, a copy of which is hereto annexed and marked Exhibit E E. Another contract was entered into with Selah Chamberlain, marked Exhibit F F. A further contract was entered into with Selah Chamberlain, marked Exhibit G G.

(The foregoing contracts are objected to by Mr. Cary, upon the ground that they are irrelevant. Overruled and exception.)

Ques. Was not the road completed to a point west of the present site of the depot at Portage, under the contract with Chamberlain relating to the eastern division?

Ans. The road was completed to a point west of the depot at Portage, under the contract with Chamberlain and Alden.

Ques. What point is that, and how is it marked with reference to the stations in the field-notes?

Ans. I do not know.

Ques. Where are the field-books kept by the engineers who superintended the construction of the eastern division?

Ans. All the field-books I know of are in the engineer's office.

Ques. State as near as you can to what point the road was constructed under the Chamberlain and Alden contract.

(Objected to by Mr. Brown on behalf of the receiver as irrelevant. Overruled and exception.)

280 Ans. To about one hundred feet west of the western end of the present depot buildings at Portage City.

Ques. In all the accounts of the company, previous to June 13th, 1863, was not the road from Milwaukee to this point treated as the eastern division, and from that point to La Crosse as the western division?

Ans. It was.

Ques. Did not the construction of the western division, under the contract with Chamberlain for constructing that division, commence at this point?

Ans. The work of constructing the road, under the contract with Chamberlain, a copy of which is marked Exhibit C C, commenced at this point, one hundred feet west of the depot at Portage.

Ques. Did not the Milwaukee and St. Paul Railway Company, after it took possession on the 13th day of June, 1863, keep its account on the basis that the eastern division extended to this point west of the depot?

(Objected to by Mr. Cary as immaterial. (Overruled and exception taken.)

Ans. The Milwaukee and St. Paul Railway Company kept its accounts upon the idea that the Portage depot was on the eastern division.

Ques. When did the fortunate idea that the eastern division did not reach the Portage depot first strike the Milwaukee and St. Paul Railway Company, so far as you know?

Ans. The question was raised after the location of the line from Columbus to its intersection with the line from Milwaukee to La Crosse, and the actual measurement of distance was made in July of the present year.

Ques. Had there, to your knowledge, been any claim or pretence by any persons interested prior to July last that the limit of the eastern division was this side of the Portage depot?

Ans. Yes; I think that has been a point in dispute, and testimony has been taken on that point, to establish how far the eastern division extended, and where it terminated.

281 Ques. Has any body ever testified to your knowledge before to-day that the eastern division terminated east of that depot?

Ans. I do not know that there has.

Ques. Have you not testified yourself before to-day that the eastern division did extend west of the Portage depot?

Ans. I have testified upon that subject, and that the road was completed to the point, one hundred feet west of the west end of the present depot building under the Chamberlain and Alden contract. Whether I testified that that was the termination of the eastern division or not, I cannot now recollect. At the time of giving such testimony I did not recollect the action of the board in separating the road into divisions.

Ques. After it was ascertained in July last that it was important for the St. Paul company to claim east of the Portage depot, was not a measurement made by that company for the purpose of confining the eastern division to a point east of that depot?

Ans. A measurement was made after the 1st of July last to ascertain the exact point where ninety-five miles in distance from the commencement of the track in Milwaukee would terminate. It has always been understood by the civil engineers, and other officers on the road, that it was more than ninety-five miles from the commencement of the track here in Milwaukee to Portage City station; and it was ascertained by the measurement made in July last that the distance of ninety-five miles was reached at a point about four hundred feet east of the junction of the line from Columbus to Portage City with the line from Milwaukee to La Crosse, and about three-quarters of a mile east of the Portage City depot; and from the commencement of the track in Milwaukee to the point one hundred feet west of the Portage depot, is about ninety-five and eighty-one hundredths miles.

Ques. Do you know any reason, or have you any basis for saying that the eastern division does not extend to this point west of that depot, except by the measurement it is ascertained to be more than 95 miles? If yea, state what.

Ans. The resolution of the board of directors authorizing the execution of the mortgage known as the Palmer mortgage,
282 and the language used in said mortgage, together with the resolution of the board of directors separating the road into divisions, are the only reasons for saying this, aside from the result of the measurement.

Ques. Can you give that resolution?

Ans. Yes; a copy of it is hereto attached and marked Exhibit H H, that is, of the resolution authorizing the execution of the mortgage; and a copy of the resolution separating the road into divisions are hereto attached and marked Exhibit I I.

Ques. When the St. Paul company took possession June 13th, 1863, about what amount in value of wood was on, and belonging to the eastern division?

Ans. I can't answer that now, but will examine and give the amount as near as I can. The wood is included in the answer I have already given as to supplies.

Ques. Since the St. Paul company has had possession of the eastern division, has it been engaged in constructing west of Mil-

waukee, and has it passed over the eastern division its laborers and employees free of charge?

(Objected to by Mr. Cary.)

Ans. It has not passed laborers and employees engaged in construction. Such laborers and employees, sent by contractors, have been charged at the rate of two cents per mile; the same rate we charge other companies for transporting that class of men.

Ques. Since the St. Paul company has been in possession as aforesaid, has it not transported over the eastern division its own iron, or iron for other railroad companies, in which its officers and directors were interested, at less than the usual prices?

Ans. It has transported over the eastern division from 12,000 to 15,000 tons of iron rails, used in laying down the track from Portage City to Columbus, for which no charge was made or no compensation was paid, and it has transported about the same amount over the whole line from Milwaukee to La Crosse, for the Minnesota Railway Company, at the rate of $2 00 per ton of 2,000 pounds.

283 Ques. What would have been the advance charge for transporting that class of material from Milwaukee to Portage?

Ans. That would be a matter of bargain. The Chicago and North Western Railway Company transport the two thousand tons of rails aforesaid from Minnesota junction to Chicago and back, being 296 miles, at $2 50 per ton, and at that rate, 90c. per ton would be a corresponding price for transporting from Milwaukee to Portage. Such freight is most always carried by special contract.

(Def'ts move to strike out this answer, as not responsive to the question.)

Ques. At the time this iron was transported, if it had been offered for transportation by a stranger, totally disconnected in business, present or prospective, what would have been a fair charge per ton for transporting it from Milwaukee to Portage City?

Ans. I should have charged $1 25 per ton, which I would consider a fair price, but would have taken it at 90c. per ton rather than not had it. The iron was transported at a time when we *we* were not pressed with western bound freight. I think we transported iron for the Winona and St. Peters and St. Paul and Pacific Railway Companies about the same time that a part of this was transported, charging $2 50 per ton from Milwaukee to La Crosse. We have transported for the Winona and St. Peters railroad during the summer past at $3 00 per ton from Milwaukee to La Crosse.

Ques. What other materials or things have been transported by the St. Paul company over the eastern division without charge, or below the ordinary charge, and what would have been a fair compensation or tariff therefor?

Ans. Thirty-six car loads of cross ties—recollect of nothing else. A fair compensation would have been ten dollars a car load.

The witness here produces the statement of mileage asked for before, and it is hereto attached and marked K K.

The witness in answer to the former question, that since June 13th 1863, to January 1st, 1864, there has been received from the Hori,

con division, for freight business over the eastern division,
284 the sum of ($45,680 15) forty-five thousand six hundred and eighty dollars and fifteen cents.

Ques. What must be added to this amount to show what would have been received by the eastern division for this amount of business, under the rates prior to June 13th, 1863?

Ans. Two-fifths of this amount.

The respective parties stipulate and admit before the auditor, that the following papers, printed, attached and marked Exhibits L, M, N, O, and P, respectively, are copies of the first, or Palmer mortgage, so called; one of the city of Milwaukee mortgages, so called; the land grant mortgage, so called; the Bronson & Soutter mortgage, so called, being foreclosed by this suit; and the third or Barnes's mortgage, so called; and that all of them are true copies of said mortgages respectively. That the said Bronson, Soutter, and Knapp commenced suit to foreclose the mortgage to them, in the district court of the United States for said district, on or about the 5th day of December, A. D. 1859, and that a copy of their bill of complaint is hereto attached and marked Exhibit Q; that a copy of the order in that suit, appointing receiver, is hereto attached and marked Exhibit R; that a copy of the order of reference therein is hereto attached and marked Exhibit S; that a copy of the report of the master therein is hereto attached and marked Exhibit T; that a copy of the said complainant's exceptions to the said master's report is hereto attached and marked Exhibit U; that a copy of the order of the court on said exceptions is hereto attached and marked Exhibit V; that a copy of the decree therein is hereto attached and marked Exhibit W; that a copy of the master's report of sale therein is hereto attached and marked Exhibit X; that a copy of order of court therein, confirming said sale, is hereto attached and marked Exhibit Y; that a copy of the petition of the Milwaukee & St. Paul Railway Company and order of the court thereon is hereto attached and marked Exhibit No. 1; that a copy of a subsequent order therein is hereto attached and marked Exhibit No. 2.

It is understood that should any mistakes of printing be discovered in any of these exhibits, they may be corrected at any time or stage of the proceedings hereafter.

285 Adjourned to 9 o'clock a. m. of the 9th inst.

SEPTEMBER 9TH, 1864.

Parties present as before.

Edwin H. Goodrich's examination continued:

Ques. How much has the Milwaukee & St. Paul Railway Company paid for repairs of the rolling stock on the road, except the forty box cars mentioned in the land grant decree, down to the 1st of June, 1864?

Ans. I can't divide the forty box cars from any other repairs. The whole amount paid by that company for repairs is $ .

Ques. How much, according to your best judgment, has been expended to keep the forty box cars in repair from June 13th, 1863, to June 1st, 1864?

Ans. I have no opinion on that subject, and have no means of finding out from the books. We don't keep accounts with individual cars.

Ques. Can you not name a sum which in your judgment will be sure to cover the amount expended for that purpose, and approximate somewhat nearly to the true sum?

Ans. I can't name any sum that would approximate anywhere near the amount.

Ques. Calling those cars at cost price, $31,979 64, what per cent. in your opinion, upon that amount would annually keep the cars in repair?

Ans. I can't tell what the percentage would be.

Ques. Do you say that you can form no opinion as to the percentage upon the value which it costs to keep the rolling stock in repair for a year on this road, which has been managed all the time by yourself?

Ans. I cannot form an opinion without an examination of the accounts, and a comparison of the amount expended with the value of the stock at different times.

Ques. Can you, and will you, and how soon will you make that examination and comparison, and answer as to the matter inquired of?

Ans. I think I can, but I don't think I will.

Ques. Are you still in the employ of the Milwaukee & St. Paul Railway Company?

286 Ans. I am.

Ques. Will you produce the account books of the Milwaukee & St. Paul Railway Company, showing the expenditures by it for repairs to rolling stock?

Ans. I will not. I have in a previous answer stated that I would give a statement of the amount of the expenditures by this company for repairs.

Ques. Are you still in the employment of Hans Crocker, receiver, in this cause?

Ans. I am managing the eastern division of the road for Hans Crocker.

Ques. Is Hans Crocker in the actual operation, and the control and management of the eastern division at the present time?

Ans. He is.

Ques. How long since he has been?

Ans. Since the order of court putting him in possession. I don't know what the date is.

Ques. Will you present the books kept by him as such receiver, since he took the actual management and control of the eastern division, showing the revenues received and sums disbursed by him?

Ans. I will not. I refer you to him for his books and papers.

Mr. Brown, for the receiver, here offers any and all books in his possession, and the defendants here request to see particularly the books kept by the receiver, showing his receipts and disbursements as such since the 28th day of April, 1864. And the defendants here request the auditor to return the same with his report, or copies

thereof examined by him; and the defendants further request the auditor to return to the court with his report all the books, papers and vouchers relied upon by the receiver as evidence of disbursements by him, or such examined copies thereof.

The St. Paul Railway Company, through its president, here offer to produce the books of the St. Paul Railway Company, together with all the books in their possession relating to the operation of the eastern division by the receiver, since the last day of April, 1864,
287 for the examination of the auditor and the parties interested, so far as they relate to this accounting; and they further offer to furnish any statements or data from said books that may be desired, either by the auditor or any of the parties interested in this accounting, on being requested so to do; but they decline to have said books taken out of their possession or returned into court with the papers in this cause.

And thereupon the defendants request a copy of all the books kept by anybody as to the operation of the eastern division, showing receipts, disbursements, and repair of rolling stock, from April 28th, 1864, to June 1st, 1864.

Ques. Can you not, and if you can, will you. see from the books how much has been expended for repairing all the box cars on the road, and see what proportion of that would belong to forty box cars, upon the basis that the expenditures have been alike to all the box cars?

Ans. I have before testified that I would produce a statement showing repairs of rolling stock, and such statement will show the cost of repairs of locomotives and cost of repairs of cars. I decline to work out the mathematical problem, any other person being as capable of doing so as myself.

Ques. What amount by cost price of rolling stock was on the road on the 11th day of June, 1860?

Ans. The books of the La Crosse and Milwaukee Railroad Company show a balance charged to rolling stock account on the 1st day of July, 1858, of $544,492 16, since which time no items are charged on that account.

Cross-examined by James S. Brown, for receiver:

I have acted as superintendent of this road under various parties since the fall of 1856. Mr. Chamberlain was in possession from September, 1857, until about June 1st, 1860. He surrendered the possession to the trustees under the second mortgage. The receiver took possession of the road on the 11th of June, 1860. He took possession of the whole road, both divisions. He remained in possession of the whole road, without any change, until the order of the court was made, June 12th, 1863. He then surrendered possession of the road to the Milwaukee and St. Paul Railway Company. During that period, and while he was in possession, he managed
288 and operated the road as an entire road, keeping an account of the earnings on the parts known as the eastern and western division. The management and operation of the road was in the or-

dinary mode in which other railroads are operated, as I understand other roads to be operated, having employees in the same manner as other roads, but not so large a number of office employees. It was necessary for him to have book-keepers, treasurers, and other officers and employees in order to carry on the road. It was utterly impossible for any one to attend to all these different duties.

Ques. Were the officers and employees men of the proper knowledge and for the positions which they severally held, and also men of integrity?

Ans. I considered them such.

Ques. Were the books and accounts kept in the ordinary and proper manner in which such books and accounts were kept?

Ans. Yes, except that they were not kept as much in detail as some companies keep them.

Ques. To what extent did the receiver give his personal time and superintendence to the affairs of the road?

Ans. From six to ten hours a day. He was at his office from four to eight hours a day when in the city. I don't know what he was doing when away from the office.

Ques. Was it to an extent to exclude any other regular business?

Ans. It was.

Ques. Did he, and to what extent, take a general supervision of the various matters connected with the road?

Ans. He did take such general supervision, and acted in what I would suppose to be the duties of a president of a corporation.

Ques. Are those duties generally separate and distinct from those performed by the other officers you have mentioned, and are they usually performed by one person, only distinct from the duties of such other offices?

Ans. They are. He having general charge of all the affairs of the company and of all subordinate officers.

Ques. Did he surrender to the St. Paul company at the date you have mentioned, and under the order of the court mentioned
289 by you, the whole of the rolling stock that was on the road?

Ans. Yes.

Ques. Did he, as a fact, after that, and until the 1st of May, 1864, have the management of the road, its earnings, expenses, or books?

Ans. No.

Ques. Had he any other data for making his reports than those furnished by the St. Paul company, and could he in any other way receive the earnings of the road than as they rendered their account and paid over the earnings to him?

Ans. No.

Ques. When the order was made April 28th, 1864, for the surrender by the company to the receiver, what part of the rolling stock did the company retain under a claim that it was their own, and what part did they surrender to the receiver?

Ans. They retained a large proportion of the rolling stock, as stated by me in detail in my examination-in-chief.

Ques. Was it possible for the receiver, with the rolling stock surrendered to him, to operate the road so as to pay running expenses?

Ans. No.

Ques. Did an arrangement with the company, by which the two divisions were in some way to be operated together, become necessary in order to prevent the entire loss of all net earnings on the eastern division?

(Objected to by def'ts.)

Ans. Such an arrangement was made, and was deemed necessary for the purpose of operating the eastern division.

Ques. Was that arrangement a fair and advantageous one, and was it the best he could make with the company?

(Objected to, that he should state what the arrangement was and not his opinion of it.)

(Overruled. Def'ts except.)

Ans. It was considered so, and was the best one that could be made.

Ques. Will you state the arrangement as near as you can?

Ans. The arrangement was not in writing, and was considered a temporary one, and was as follows:

290 The road was to continue to be operated as an entire line from Milwaukee to La Crosse. The Milwaukee and St. Paul Railway Company undertaking to furnish sufficient rolling stock, in addition to that delivered to the receiver, to do all the business belonging to the road; an account of the earnings of the eastern division was to be kept, also an account of all the expenses on said division; the St. Paul company charging fair compensation for the use of their rolling stock while employed on that division.

Ques. How were the general expenses of the management of the road to be divided?

Ans. They were to be pro rated mile for mile with all the roads of the Milwaukee and St. Paul Company, or as 95 miles would be to 324.

Ques. Will you state what you mean by general expenses?

Ans. The expenses of superintendence, general freight, and ticket agent, and all other agents and clerks employed in and about the general offices of the company, serving and doing business for the entire line of road.

Ques. State whether or not there was a saving to the eastern division by such arrangement and paying for its separate management; and if so, what percentage?

Ans. There was a saving. Can't state percentage.

Ques. Would not the same number of superintendents, book-keepers, and officers generally connected with the management of the road be necessary for the eastern division separately as are required for the two divisions together?

Ans. No there would not. The eastern division operated alone

would require a superintendent who would do nothing else, a cashier also; but the other officers would be less in number.

Ques. What was the condition and repair of the road between Milwaukee and La Crosse when the receiver took possession?

Ans. It was not in good condition, particularly the eastern division. The western division was in better, because it had not been used so long. The repairs were made under my general superintend-
291 ence, and the repairs that have been made were necessary for the proper operation of the road.

Ques. Has the receiver ever been in possession of the Highbee warehouse?

Ans. No.

Ques. Was Highby in possession of that warehouse at the time the receiver took possession of the road?

Ans. Yes.

Ques. Who built it?

Ans. I don't know, except as to that portion built since Highbee came upon the premises. As it now stands, the whole of it has been rebuilt by Highby, because he tore down the old one, known as the Comstock warehouse, that being unfit for use.

(The witness here produces a paper which he says is an abstract from the books of the St. Paul company of the operations of the eastern division for the month of May, 1864, in response to the request of the defendant above made, to furnish the same from April 28th, 1864, to June 1st, 1864, as being the nearest abstract that can be got at between those two dates, and which is hereto annexed and marked L L.)

Adjourned to 2 o'clock p. m.

SEPTEMBER 8TH, 1864, 2 o'clock p. m.

Cross-examination of Edwin H. Goodrich by Mr. Brown, on behalf of the receiver, continued:

Ques. Under the arrangement alluded to, were the officers who acted as cashier, book-keeper, and superintendent, employed as well by the receiver as the St. Paul company?

(Objected to by def'ts. Overruled. Def'ts except.)

Ans. There was no change of employment at the time of change of possession May 1st, 1864; the same officers continued to perform the same duties as they had previously done, and in making up the account of expenses, a proportion of the expenses of such officers, agents, and superintendents, was charged to the eastern division in the ratio as stated heretofore.

Ques. Did the St. Paul company, when taking possession of the road, under the orders heretofore alluded to, make any and what change from the employees who had before been appointed by the receiver?

Ans. They made no change in the employees, or rather they continued in employment all the men employed by the receiver,
292 but not in all cases in the same capacity as employed by him,

and they brought new men into service. They brought a vice president here, a superintendent, treasurer, and a fiscal agent.

Ques. Did the vice president and superintendent cease their connection with the road before the new arrangement on 1st of May, 1864, with receiver?

Ans. Yes; and the fiscal agent has since resigned.

Ques. Were the supplies that belonged to the road surrendered with the rolling stock to the St. Paul company under the order of the court allowing that company to take charge of the road heretofore alluded to?

Ans. All the supplies on hand at the time the receiver surrendered the road to that company were taken charge of by said company.

Ques. From the time that the receiver took possession, up to the time of his surrender to the St. Paul company, did parties representing the complainants in the second mortgage, and the Milwaukee and Minnesota Railroad Company from time to time look at the books of the receiver, and were any complaints ever made by them, or either of them, as to the manner in which those books were kept?

(Objected to by defendants as immaterial. Overruled, and they except.)

Ans. The parties representing complainants in 2d mortgage did look frequently at the books, but I never knew of their making any complaints as to the manner in which they were kept; I don't know that the Milwaukee and Minnesota Railroad Company or any of its representatives ever did look at the receiver's books.

Ques. Were any new buildings erected while the receiver was in possession not absolutely demanded by the necessities of the road, or any repairs upon old buildings made, which, in the proper running of the road, might be avoided?

Ans. Not to my recollection or knowledge; they were all made under my general supervision.

Re-direct by Mr. Carpenter:

Ques. What salary does the St. Paul company pay its president the present year?

293 (Objected to as immaterial. Objection sustained and exception by Mr. Carpenter.)

Mr. Carpenter offers to show that the said St. Paul company pays the president of said company, for his services, nine thousand dollars per annum. That the Milwaukee and Prairie du Chien, having about the same length of road, receipts, and disbursements, pays its president for his services per annum, $4,000.

(Objected to, and objection sustained and defendant excepts.)

Ques. Has the receiver, or any person in his employ, to your knowledge, been directly or indirectly interested in the receipts of the Highby warehouse since June 11th, 1860?

(Objected to by Mr. Brown as immaterial, except so far as the receiver is concerned.

Objected to by Mr. Cary as immaterial and that it is not cross-examination.

Overruled and exception.)

Ans. I do not know that the receiver or any person in his employ has been directly or indirectly interested in the receipts of the Higby warehouse since June 11, 1860.

Ques. In the arrangement made between the receiver and the St. Paul company, about May 1, 1864, was any arrangement made about dividing through freight between the eastern and western divisions?

Ans. No arrangement was made different from that which has always been in existence.

Ques. Do you, as a railroad man, know any more just or equitable basis for dividing the earnings of the whole road between the eastern and western divisions than that which has been acted upon, and is set forth in detail in the testimony of the receiver before the auditor?

Ans. I don't know of any more just or equitable manner of making a division under the circumstances than that was made, exclusive of all question as to the compensation for rolling stock between the divisions, respectively.

Cross-examination of Edwin H. Goodrich, by John W. Cary:

Ques. Does the $125,000 of supplies mentioned by you include all the supplies in the hands of the receiver at the time of the
294 surrender to the St. Paul company, on the 12th of June, 1863?

Ans. My impression is it does not, but I am unable to answer that question without reference to a book which I have searched for within the past two hours, but have not yet been able to find; the question is susceptible of a positive answer when I can get that book, and in the meantime I decline giving an opinion as to the matter inquired about.

Ques. Since the 12th day of June, 1863, who has made the repairs on rolling stock?

Ans. The Milwaukee and St. Paul Railway Company.

Ques. Has any, and if any, what part of those repairs been charged to the eastern division?

Ans. There has been no part charged to the eastern division, or to the receiver, except on such proportion of locomotives and other rolling stock as was understood to belong to the eastern division. Reference is made to my former answer, setting forth the proportions in which it is claimed the rolling stock is owned.

Ques. In item No. 7 of Exhibit E, the sum of $6,978 03 is charged for repairs of tools, &c.; does that include the whole amount expended for the repair of all the tools in the shop at Milwaukee, or only a proportionate part, and if so, what portion?

Ans. I cannot answer that without reference to the voucher's distribution book. On reference to the distribution books, I find that the item named above is the amount charged for repairs of all the tools in the shop at Milwaukee.

Ques. If rent is to be paid for the use of the repair shop and tools at Milwaukee, since June 12th, 1863, should a proportion to be charged the receiver or eastern division; and if so, what proportion?

Ans. The same proportion should be charged to the receiver, or eastern division, as the proportion of rolling stock owned by that division bears to the whole rolling stock on the road.

Ques. Can you furnish a statement which will show the earnings of the eastern and western divisions, from June 11th, 1860, to January 13th, 1862, upon the basis heretofore named, deducting therefrom the operating expenses and all money paid for right of
295 way, renewals of track, fencing and buildings, and also deducting from the earnings of the eastern division the amount of interest paid on the Palmer mortgage and the city mortgages, including the amount paid to the sinking fund on the Palmer mortgage?

Ans. I think I can, and will undertake to do so as soon as the clerks can compile it.

Ques. You have stated the percentage of rolling stock used on the road and the percentage of that used on the western division. What was the percentage of it used on the eastern division during the same period of time?

Ans. The balance of the rolling stock that was used, except what I have, was used on the western division—was used on the eastern division.

Ques. You have stated that an arrangement was made for rolling 2,000 tons of iron rails for the eastern division. Was it necessary that such amount should have been rolled and relaid in order that said division might be properly and safely operated as a railroad?

Ans. It was if all the through business of the road is to be carried over the eastern division. Should the through business of the road go by way of Columbus and Watertown, the necessity for laying of new rail would not be so great.

Ques. About how much of that 2,000 tons has been re-rolled?

Ans. About 1,000 tons.

Ques. Was that amount necessary to be relaid in any event?

Ans. It was.

Ques. State whether the new buildings erected on the eastern division, while in possession of the St. Paul Railway Company, were necessary for the proper, successful, and economical operation of the road?

Ans. They were.

Ques. Has any work been done or improvements made on the eastern division, while in the possession of the St. Paul Railway Company, which were not demanded by the best interests of said division, and necessary to the proper operation of it as a railroad?

Ans. There has not to my knowledge.

296 Ques. You have stated that 42 tons of iron, rolled under the arrangement made for rolling iron on the eastern division, were taken by the St. Paul company and laid down on their road. By whom was it paid for? and is it charged in the account against said eastern division? State fully in regard to it.

Ans. It was paid for by the Milwaukee and St. Paul Railway Company, and is not charged in any account against the eastern division;

but it is charged to the account of renewal of track on the western division.

Ques. You have answered that in item 28 of Exhibit E there is a certain amount charged for rebuilding the depot at Portage City, and you have also stated that said depot, as you understand it, is on the western division. Give the amount so charged in item 28 of Exhibit E, and explain how it happened to be charged in that manner.

Ans. The amount charged for building the depot at Portage City was expended on a building to replace one destroyed by fire, and the amount was charged against the eastern division on the supposition that the Portage City station was within the limit of 95 miles from the commencement of the track in Milwaukee. The amount so charged, as was stated, was between three and five thousand dollars.

Ques. Have the repairs on rolling stock since June 12th, 1863, except that proportion of the rolling stock purchased by the receiver, which is admitted to belong to the eastern division, been paid for by the Milwaukee and St. Paul Railway Company, and what amount has been so paid since June 12th, 1863?

Ans. The repairs on rolling stock since June 12th, 1863, have been paid for by the Milwaukee and St. Paul Railway Company; and the repairs on the proportion understood to belong to the eastern division, has been charged to that division. The whole amount of repairs of rolling stock is $174,967 63-100, of which $25,126 97-100 has been charged to the eastern division.

Ques. Who purchased the rolling stock which the receiver took possession of on the 11th day of June, 1860? For what was
297 it procured? and when and where was it used up to that time?

Ans. Almost the entire quantity was purchased by the La Crosse and Milwaukee Railroad Company, to be used upon the road in the prosecution of its transportation business, and it was used for that purpose on the company's railroad between Milwaukee and La Crosse.

Ques. Was there ever any division of said rolling stock as between or as belonging to either division of said road as distinguished from the other?

Ans. Not to knowledge. There never was.

Ques. What percentage of the rate between Horicon and Milwaukee was paid on the La Crosse and Milwaukee Railroad Company to the Horicon railroad as a compensation for furnishing the La Crosse company with the Horicon road business under the contract between the two companies?

Ans. About 30 per cent. up to the time of the expiration of the first period of the contract.

Ques. What was the occasion of altering it?

Ans. At the expiration of the first period of the contract, Lindsay Ward, the receiver of the Milwaukee and Horicon Railroad Company, would not consent to continue the business upon the basis

upon which it had been done previously, and changes were made from time to time until the basis of division finally agreed upon was an equal division of all way bills representing the freight business on the road, he claiming that a much greater proportion should be allowed to him than that.

Ques. Why was the rate changed when the St. Paul company took possession?

Ans. When the St. Paul company took possession of the Horicon division, they refused to furnish the business of that division to the eastern division unless a greater proportion than one-half of the through rate was allowed to them, and insisted upon having seventy-five per cent. of such rate, but the matter was finally settled by the receiver consenting to accept of thirty per cent. of the through rate as the proportion to be paid to the eastern division.

Adjourned to Sept. 10, 1864, at 9 a. m.

208 SEPTEMBER 10, 1864.

Cross-examination of Edwin H. Goodrich by Mr. Cary continued:

(The witness here produced a statement showing the repairs of rolling stock from June 13th, 1863, to June 1st, 1864, called for by the defendants, and which is hereto annexed and marked Exhibit M M.)

Ques. On and after the 13th of June, 1863, were the Milwaukee and St. Paul company the owners and in possession of a line of railroad from Watertown to Milwaukee which they were operating?

Ans. They were.

Ques. Was that line of road connected with the Horicon road by a railroad? and if so, by what road?

Ans. It was connected with the Horicon railroad by the Chicago and Northwestern railway. The distance from Watertown to the junction on the Horicon railway is about 22 miles.

Ques. Had the Milwaukee and St. Paul Railway Company running connections and business arrangements with the Chicago and Northwestern Railway Company, and could they have done the business of the Horicon road on that road and said Watertown road? and if so, how much would the distance be increased thereby from the Horicon road to Milwaukee?

(Objected to and objection overruled, and exception taken.)

Ans. The business of the Horicon road could have been done on the Northwestern and Watertown roads; the distance would have been increased about 11 miles.

Ques. Did the receiver make the bargain himself in regard to doing the business of the Horicon road on the eastern division with the Milwaukee and St. Paul Railway Company, and did he obtain the best price which he was able to get from them for that business?

Ans. The receiver did make the bargain, and obtained the best possible price he could.

Ques. Was there ever a time after the 11th of June, 1860, up to the 12th of June, 1863, when the Horicon road could have

299 transacted its business over the Northwestern and Watertown roads? and if not, why?

Ans. There was no time during that period they could have done so without a violation of contract between the Chicago and Northwestern and La Crosse and Milwaukee roads, the Chicago and Northwestern Railway Company having agreed that they would not do the business of the Horicon road by way of Watertown and Milwaukee being part of the consideration of mutual agreement between the two companies. There is no other way except those two of connecting the Horicon road with Milwaukee.

Ques. You have said on your direct examination that you estimated that the Milwaukee and St. Paul company took possession of about $125,000 worth of supplies on the 12th of June, 1863, in and about the workshops on the eastern division. Have you since examined the inventory of supplies, on hand at that time, and do you not find that answer correct? and if not, state the amount and situation of supplies then on hand.

Ans. I have since examined the inventory, and find my estimate erroneous. I now propose to submit a statement showing the amount of supplies on hand at that time, which will show the amount in value of supplies and materials in and about the workshops, and on the eastern division, on the 12th of June, 1863.

Ques. Were the supplies for the whole road purchased by the receiver, which were to be used in repair of rolling stock, left at the workshops in Milwaukee during the time the receiver was in possession, and was such the case on the 12th of June, 1863?

Ans. The supplies on the whole road were purchased by the receiver, and were taken to the workshops in Milwaukee, with trifling exceptions, and such continued to be the case during his administration, and that was the situation on the 12th of June, 1863.

Ques. State the manner in which the supplies were charged to the several divisions, or the manner in which the accounts of them were kept during the administration of the receiver.

Ans. When supplies were purchased, they were usually pur-
300 chased for some specific object; for instance, locomotive tire was purchased for locomotive repairs, and at the time of such purchase was charged to locomotive repairs, whether used at that or any future time. Materials for car repairs were purchased and charged in same manner.

Ques. On the 13th of June, 1863, had all the supplies on hand been charged and entered into the account for operating expenses, repairs, or other accounts? and if not, what proportion thereof had been?

Ans. Our custom was as stated above, and I have no doubt the whole amount on hand at that time had been so charged, except some unimportant items which might have been overlooked.

Ques. You state that about 1,200 tons of iron and 63 car loads of cross ties have been transported from Milwaukee to Portage City for the St. Paul company, for which no charge had been made; state how that happened, and why it was.

(Objected to as irrelevant by def'ts. Overruled, and they except.)

Ans. Such transportation is usually done under special contract. I was ordered by the president of the company to forward the iron loaded upon the docks at the station to Portage City, but had no instructions as to what rates to charge on the same. When purchase of cross ties and deliveries were made upon the docks at this station, I forwarded these in the same way, leaving the price to be adjusted hereafter. This is the only explanation I can give.

Ques. Was any and what proportion of the rolling stock on hand when the receiver took possession purchased and paid for by the stock of the La Crosse and Milwaukee Railroad Company?

(Objected to as immaterial, and because the right of the St. Paul company to rolling stock is fixed by the decree in the land grant cause, under which it claims as a purchaser. Overruled, and defendants except.)

Ans. A considerable part thereof was so purchased. Can't state how much; but will undertake to furnish a statement from the books of the company. The balance was paid for—some in cash, some in farm mortgage bonds.

301 Ques. Explain fully what disposition was made of the gold which has been received by the receiver during his administration.

Ans. So much of it as was required to be used in carrying on the business of the road was so used; the balance was sold at the highest rate of premium at the time of sale; the premium so received was entered to the credit of exchange and commission, or a similar account.

Ques. Where two independent roads are in connection, is it customary for the road receiving the larger amount of tonnage to allow a drawback to the other on the tonnage so received?

Ans. Where the earnings go into a common fund, so far as I know, it is.

Ques. Has the western division since the 11th day of June, 1860, furnished to the eastern division a larger amount of tonnage than it has received from the eastern division? and if so, how much more?

Ans. My impression is that the western division has furnished the largest amount of tonnage. Can't state the amount, but it can be ascertained by compilation of statistics in the office. I will furnish it.

Ques. What amount of drawback is usually allowed in such cases?

Ans. I don't know.

Ques. State any additional fact or knowledge that you may have, touching the western termination of the eastern division, in regard to the point of junction between the two roads.

(Question withdrawn.)

Ques. At what point on the line of the La Crosse and Milwaukee road did the land grant road commence, as fixed by the company, for the purpose of claiming lands under the land grant?

Ans. At the point of junction with the Portage division; the grant being from Madison, by the way of Portage City, to the St. Croix river or lake, &c.

Ques. Was that point definitely fixed by the company?

Ans. It was, and plats were filed with the secretary of state in the fall of 1856 or spring of 1857.

302 Edwin H. Goodrich re-examined by Mr. Carpenter for defendants:

Ques. What books of record, belonging to the old La Crosse company, are in the receiver's custody?

Ans. The books of record of the board of directors, the book of record of the executive committee, the book of record of contracts, and books of records of descriptions of lands; these are the only books of record I know of.

Ques. Who has the maps, profile, and field-notes, kept during the construction of the eastern division?

Ans. All that I know of are in the engineer's office in this building.

Ques. Can you furnish us a statement or inventory of all the rolling stock on the road January 1st, 1864?

Ans. That is contained in Exhibit M M. I can furnish a statement of the numbers of locomotives and cars.

Ques. In the statement which is marked Exhibit C, before the auditor, do the statements "mileage east division" and "mileage west division," contain the mileage of all the rolling stock, or only of the locomotives?

Ans. It contains the mileage of trains, and of those trains made up of engines and cars. It shows the mileage of trains, whether it contains one car or twenty cars.

Ques. During the year, can you furnish any opinion or average of the number of passenger cars run with each passenger train from Milwaukee to La Crosse?

Ans. The average on the whole line would be three passenger cars, one baggage car, and on one train a day each way, one mail and express car.

Ques. What do you think would be the average number of freight cars on a train?

Ans. The freight trains vary from five to twenty cars. I cannot give the average number of all the trains.

Ques. What was the amount of old iron which was re-rolled into the 42 tons, relaid upon the western division, worth per ton?

Ans. $70 to $75 per ton.

303 Ques. Was any and how much iron loaned or otherwise disposed of to the iron company at Iron Ridge?

Ans. Old iron was furnished to lay down track from near the Iron Ridge station to the Iron Mine, being about one mile in distance.

Ques. About how many tons, and what was it worth per ton?

(Objected to as immaterial. Overruled and excepted to.)

Ans. From 90 to 100 tons, worth from $70 to $75 per ton.

Ques. Do you know of any other dispositions or loans of iron or other supplies, or property pertaining to the road? If so, state the same fully.

The Milwaukee and Minnesota Railroad Company, at one time, through its president or vice president, assumed to loan to Kellogg & Strong at one time, a quantity of old rail, to extend the track of the Milwaukee, Chicago, and Green Bay railroad to the elevator of said Kellogg & Strong, and the party in possession of the Milwaukee and La Crosse railroad at that time allowed the iron to be used for that purpose. I think the road was at that time in the possession of Selah Chamberlain. I can't tell how many tons. I never knew.

Ques. To what division did the iron loaned to the Iron Ridge company belong?

Ans. It was taken out of the track at points between Germantown and Horicon, on the eastern division.

Ques. About what date was the iron loaned to the Iron Ridge company?

Ans. I think it was laid down in the months of July and August, 1864.

Re-cross-examination by Mr. Cary:

Ques. To whom did the old iron belong out of which the 42 tons of iron was rolled, which has been laid down upon the St. Paul company's road?

Ans. It belonged to the St. Paul company. As the eastern division is at this time indebted to that company on account of old iron, I will furnish a statenent of the old iron account.

Ques. Who loaned the iron to the Iron Ridge Iron Company,
304 for what time was it loaned them, and on what consideration?

Ans. The contract with the Swedes' Iron company will explain itself. The Swedes' Iron company is the company at Iron Ridge, referred to above.

Re-cross-examined by Mr. Brown:

Ques. Does the eastern division derive benefit from the loan of this iron?

Ans. It has the whole business of transporting iron over and between the Iron Ridge station and Milwaukee, the business of transporting material and supplies for the erection of furnaces at Iron Ridge, and the business of transporting the iron manufactured at those furnaces, shipped to Milwaukee. The amount received for the transportation of iron ore during the month of August, 1864, was $2,801 25.

The witness explains his answer as to the amount of coin received by the receiver, as follows: "In my answer to the question as to the amount of coin received, I had reference to the amount received for passage money, and not to drafts on the Treasury Department, received for the transportation of mails."

The paper hereto annexed and marked Exhibit S S, is a statement of the old iron account between the eastern and western divisions. The paper hereto annexed and marked Exhibit T T, is a copy of the contract with the Swedes' Iron company, referred to in my previous

testimony. The paper hereto annexed and marked Exhibit U U is a statement showing the manner of payments for rolling stock, by the Milwaukee and La Crosse Railroad Company, referred to in my previous testimony. The paper hereto annexed and marked Exhibit V V is a statement of the earnings of the eastern division from August 20th, 1864, to August 31st, 1864, and from September 1st to September 10th, 1864, referred to in my previous testimony.

EDWIN H. GOODRICH.

Wallace Pratt, a witness produced on behalf of the receiver, and sworn and examined.

Mr. Brown offers three accounts hereto annexed, and marked Exhibits L L L, M M M, and N N N, and asks that they be allowed and credited to the receiver, on his account.

305 (Mr. Carpenter objects to all these accounts.)

1st. That they are not in or annexed by the order of reference to the auditor, and as to the account marked Exhibit L L L, makes the further objection that it does not purport to be a service rendered to the receiver in this cause, but for services rendered to Hans Crocker, esq., as receiver in another cause, which has not been referred to this auditor.

(Overruled and exception taken.)

Ques. Will you state whether the disbursements charged in those accounts were actually made, and were the services therein charged rendered, as charged in said accounts?

Ans. They were, and the charges made are reasonable compensation for the services rendered.

WALLACE PRATT.

The respective parties before me stipulate that I shall report, among other things, as follows, viz: "I further report that on the first appearance of the respective parties before me, Mr. Carpenter, solicitor as aforesaid, stated that the great mass of the accounts of the receiver would not be attacked before the auditor, by him or his clients; that he would file with the auditor special exceptions to the several items of said account, which he intended to attack; and that as to all items not so specially excepted to, the auditor might be excused from the manual labor of examining the vouchers to sustain the cause;" and said Carpenter did, in pursuance thereof, file with me said special exceptions to items, which is hereto annexed, and marked Exhibit K K K.

Adjourned to 9 o'clock a. m. on the 24th inst.

Matt. H. Carpenter was sworn and examined on behalf of the dedefendants, and testified as follows:

At the time these orders were made directing payments on the Cleveland judgment, I was acting as solicitor for the Milwaukee and Minnesota Railroad Company, or A. Fleming, and for Graham and Scott; and was also and had been for years the general attor-

306 ney of said Cleveland; Chamberlain was owner of the judgment, but was indebted to Cleveland, and Cleveland was indebted to me.

About the time that one or two of these orders was or were made, I knew in a popular way that Chamberlain had applied or intended to apply therefor; but to the utmost of my recollection, I was never notified of such application as solicitor, or as representing any party in this cause; and I did not know at what time any of the applications were to be or were heard, and certainly I was never requested by any party or person to give consent, on behalf of any party or person, to such orders being made; and I never did consent thereto, either in writing or verbally.

I remember the second conversation spoken of by Chamberlain, and the one testified to by Mr. Emmons, and think they occurred about the same time, and had reference to the same order, and was, I think, one of the subsequent orders; I have always understood that the first order was obtained by Finches, Lynde & Miller, and the latter ones by Messrs. Emmons & Van Dyke, though of this I have no particular knowledge; their application to me was not to get my consent to the making of the orders, but to know whether, in case the orders were granted and Chamberlain got the money, currency, Cleveland would receive it in payment from Chamberlain, and I replied to both of them, that I thought he had better do so, and I should certainly advise him so; if I am mistaken as to the time of these conversations, and they were before the first order, I may have added that I should be willing to take the currency from Cleveland for what he was owing me; but I am very positive, though may be mistaken, that these conversations were about the time of the making of the later orders.

An examination of my bank book convinces me very strongly that I knew nothing of the first order until after it was granted, and after Cleveland had gone home; the first order seems to have been made April 22, 1861; my bank note shows a discount of my own note, I suppose of $500, on the 25th of April, and another for $200 on the 14th of May, and up to that time Cleveland had paid me noth-

307 ing; on the 17th of May, there is a deposit credited for $1,000, which, I think, Cleveland paid me; and on the 19th June, ten days before the order was made, on June 29, 1861, there is a deposit of $2,000, and my recollection is that on that day he gave me $3,000 in three certificates of deposit; that I then used two of them, and sent the money east, and that the other lay in my safe till I had occasion to use it afterwards, and it appears to have been deposited July 12th.

My bill against Cleveland was for services rendered before the 1st of January, 1861, in no way depended upon the granting of these orders, and was perfectly good against Cleveland, who was a man of wealth, whether the orders were granted or not; I never received a cent more more in consequence of the orders being granted, and should not have received a cent less if the orders never had been granted, and was in no way or manner interested in the allowance

or denial of the orders, and never gave, and never was asked to give any consent thereto.

Mr. Fleming informs me that very soon after the first order was made, he informed me of it; if so, I did not see Cleveland afterwards before he left town, or I should not have been getting my own notes discounted on the 22d of April and 14th of May.

Cross-examined by Mr. Brown:

Ques. Was a portion of the Graham and Scott judgment, for which you were an attorney, assigned to Finches, Lynde & Miller, or to a client of theirs?

Ans. There was an understanding betweed Graham and Scott, and Finches, Lynde & Miller, that a claim in their hands to collect against them, should be paid out of their judgment against the railroad company; but whether that was reduced to writiug or not, or whether a formal assignment of the judgment pro tanto was made or not, I do not recollect. My impression is, none is made.

Ques. Did you ever go with any member of that firm to the district judge for the purpose of requesting an order upon the receiver for the payment of a portion of that judgment?

Ans. I recollect that Graham once came to me in a complaining mood, after a communication which he said he had with Asahel Finch,
and Graham seemed to think that if Finches, Lynde & Miller
308 were his counsel, instead of myself, he could get money from
the district judge out of the fund to apply on his judgment, but that the district judge would make no order upon my request; I told Graham I thought this was probably so, and that it was of no use for me to go there and ask such an order; but as the Milwaukee and Minnesota Railroad Company had an understanding with Graham that their judgment should be protected at all events, no matter what should result from the litigation; as to his judgment, a payment on the judgment would be substantially for the benefit of the Minnesota company; and *and* if he could get some member of the firm of Finches, Lynde & Miller to go and make the application to the judge, I would go along with him and second the request, as his counsel; my impression is that Kurtz Miller, one of said firm, and myself went to said district judge and requested such payment, and that the judge refused it.

(The part of the answer containing the conversation with Graham is objected to, as not being responsive to the question, and as being scandalous in its nature. Objection sustained, to the extent that the portion of the answer referred to is irrelevant.)

Ques. In the course of that application did the district judge say to you that payments must be made upon the liens in their order?

Ans., I don't recollect that he did, and, I think, considering the order that he had before then made, I should have laughed in his face if he had done so, which I don't recollect to have done, and so don't think he made the remark.

Ques. In the course of the conversation, was allusion made to an order for payment on the Chamberlain judgment, and did you say

that it was right, and that sums in the hands of the receiver should be paid out upon judgment liens, without waiting for the second mortgage, or did you say anything to that effect?

Ans. My recollection of that interview is very indistinct; I only distinctly recollect that the judge refused to pay anything on the judgment; but as I have made several arguments before the
309 judge, printed briefs, and delivered opinions, which have been printed, to the effect that judgments are no liens in this State upon railroad franchises and property, I do not believe I said any such thing.

Ques. At what time did this conversation occur?

Ans. I am wholly unable to state, but I think after it was known that the judge was paying out the fund on other than the mortgage leins.

Ques. Was it before or after the last orders for payment on the Cleveland judgment?

Ans. I cannot state.

Ques. Was it before or after the decree in the second mortgage cause in the district court?

Ans. I cannot say when the decree was made without referring to papers; my impression would be that it was after the decree, but I am not at all certain.

Ques. Did you afterwards have a conversation in the office of Finches, Lynde & Miller, with Mr. Miller, in which he stated the facts set forth in my former question to you, as to what took place before the judge, and in which your reply was that your consent could not bind the Minnesota Railroad Company.

Ans. I have no recollection of any such conversation.

Ques. Was this conversation with Judge Miller before or after the stipulation made with the trustees of the second mortgage?

Ans. My recollection as to dates and relative order of events is nearly worthless; I have been engaged in this La Crosse litigation for over five years, as attorney for Cleveland, Fleming, Graham and Scott, and the Milwaukee & Minnesota Railroad Company, and it is utterly impossible for me to fix from memory the date of the interview; and I do not think I have any memorandum of it, or other means of arriving at it.

Ques. Up to the time of that stipulation with the trustees, had your relations with Judge Miller been most friendly, and had you taken occasion often publicly to express your approval of his course pursued in the second mortgage cause, and of his orders made therein?

(Objected to as incompetent and immaterial. Overruled and exceptions taken.)

310 Ques. You have stated that Graham & Scott had an arrangement with the Milwaukee & Minnesota Railroad Company by which the former were to be protected in all events as to the payment of their judgment; was that arrangement verbal or in writing?

Ans. When I was first applied to, to be retained, by Mr. Fleming to protect the interest of the Minnesota company, I stated to him the various retainers which I had before had, from Cleveland, Graham

& Scott, and perhaps others, and told him that as Graham & Scott's judgment was subsequent to the date of the Barnes mortgage, this litigation might reach a point where the interests of the Minnesota Company would be opposed to those of Graham and Scott, and that I could not accept any retainer which would bring me into collision with my retainer for Graham and Scott. To this it was agreed that if the litigation did reach any such point, Graham and Scott should be perfectly protected, and upon this condition I accepted the retainer; and subsequently, after Fleming's party got control of the Minnesota company, a formal written contract was make, the precise terms of which I do not recollect, but which was satisfactory to Graham, as a compliance with the previous understanding with me.

(Mr. Brown objects to all the answer, except that part which states that there was a written contract, as not responsive to the question. Overruled and exception.)

Ques. Did you, as representing the Fleming interest in the Minnesota Railroad Company, argue a motion made by one of the defendants in the second mortgage case for a receiver, and did you also assist in arguing the motion for a receiver in the Howard case?

(Objected to as immaterial. Overruled and exception.)

Ans. I have no recollection of any application for a receiver by a defendant in the second mortgage cause, and of course do not recollect whether I argued it if there was one; my recollection is that the order of the court appointing the receiver in the Howard case
311 recites that the motion was made, or argued by Hubbell & Carpenter; but I have no recollection of the argument, and cannot say from recollection whether I participated in it or not.

MATT. H. CARPENTER.

The examination of James S. Brown, a witness produced, sworn, and examined on behalf of the defendants.

MONDAY, *Sept.* 26, 1864.

James S. Brown being duly sworn and examined, testifies as follows:

Ques. Was you counsel for the complainants in this cause from the commencement of this suit, until some, and what subsequent time?

Ans. I was of record counsel for the complainant from the commencement of the suit until to-day, but those representing the second mortgage, to wit, Mr. Sage and some others, who are interested in it, assenting to releasing me from my retainers, a short time before I appeared here for the receiver, and from that time I consider myself as having no connection whatever with this suit, except as attorney for the receiver. I refused to act for the receiver until such assent was given.

Ques. While you remained counsel in fact for the trustees, did you have the principal management of this cause, so far as regarded arguments and proceedings in court?

Ans. I so considered it. I believe such to have been the fact.

Ques. Did you at any time receive notice of any of these applica-

tions for payment on the Cleveland judgment? or did you even know, at the time they were being heard, that they were being heard?

Ans. I have no recollection of receiving any such notice, and feel very confident that had I had an opportunity of opposing the allowance of the orders, I should have done so. My impression is that I either verbally or in writing, after hearing of these orders, requested the judge to require notice before giving others. Still it was a great while ago; there were many motions and proceedings in the case, and I possibly may be mistaken in my recollection. I will add
312 that Mr. Thomas L. Ogden was solicitor of record for complainants, and notices were usually served on him. On the western division I was merely employed in a dispute between the first and second orders of bondholders, and should have considered Mr. Cary as representing the general interests of the complainants in that case.

Ques. Did you ever stipulate, assent, or consent, directly or indirectly, to the making of any of these orders?

Ans. I have no recollection that I did, nor do I believe I did, except in so far as it may be implied from the mere fact of my failure afterwards to move to have the money paid back.

JAMES S. BROWN.

Adjourned to Sept. 27, at 10 a. m.

SEPTEMBER 27, 10 a. m.

Norman J. Emmons, a witness produced, sworn, and examined on behalf of the receiver, testified as follows:

Ques. Do you know whether or not counsel for the Milwaukee and Minnesota Railroad Company assented to payments by the receiver on the Cleveland judgment? If so, please state particulars.

(Objected to by Mr. Carpenter as incompetent, irrelevant, and immaterial. Objection overruled and exception taken.)

Ans. I knew Mr. Carpenter was acting in this suit as counsel for the Milwaukee and Minnesota Railroad Company, or appeared so of record and in court. In April, 1861, Mr. Van Dyke and myself, as counsel for Mr. Chamberlain, applied to the court for an order directing the receiver to make a payment upon the Cleveland judgment. That application was made at first informally at chambers. The district judge directed us to give notice to parties who were solicitors and counsel of record in the cause. Afterwards I had some conversation with Mr. Carpenter on the subject, at which time he had been made aware that an application had been made. My application to Mr. Carpenter was to solicit him or his influence to persuade Mr. Cleveland to take currency in payment from Chamberlain. Mr. Carpenter told me that he would do all that he could consistent
313 with his professional engagements with Mr. Cleveland. It was then known that if the order was granted we could get nothing on the receiver's check but currency, which was depreciated at the time, or doubtful. Mr. Chamberlain did not want to receive it, unless he could arrange with Cleveland to take it off his hands. I understood from some source that several thousand dollars of that

money was going to Mr. Carpenter, owing to him by Mr. Cleveland. It is my impression that I got this information from Mr. Carpenter, but I will not speak positively about it, for I know Mr. Chamberlain, Van Dyke, and myself talked about it, and I may have received it from them. I made no direct appeal to Mr. Carpenter for consent on his part to the order on behalf of the Milwaukee and Minnesota Railroad Company. That I had several conversations with him on the subject, and I understood him to assent fully to the orders being made on behalf of all the parties he represented. He did not make or suggest any objection. When this order was made, Judge Miller was told that all parties had been notified of the intended application. I don't know that there was any formal notice—am quite sure there was no written notice—all parties were made aware of the intended application.

Cross-examined by Mr. Carpenter:

Ques. Do you know that any notice was given to the respective parties of a time and place at which the application for payment on the Cleveland judgment was to be made, and heard by the court or judge? If so, what was the notice? how given? to whom communicated? and what did it specify?

Ans. I am not personally aware of any notice other than I have spoken of in my direct examination.

Ques. Did you, in the conversation you have spoken of with Mr. Carpenter, make any direct communication to him upon the subject of the time and place at which the application was to be heard?

Ans. I don't think I did. Mr. Van Dyke had the matter personally in charge, and my application, as I have before stated to Mr. Carpenter, was particularly, if not exclusively, directed to his aid in persuading Cleveland to take currency, or the receiver's check for currency.

314 Ques. Was not Mr. Carpenter at that time the attorney for Mr. Cleveland, and had he not been for many years?

Ques. Yes, I know he was acting for Cleveland as his counsel with reference to that matter.

Ques. Where was the application for the twenty-eight thousand and odd dollars payment heard, and who was present?

Ans. The application was made to the judge personally in his library, and he expressed his willingness to make the order if no objection was made. Van Dyke and myself were present, and perhaps Mr. Lynd. Then the matter lingered along before any order was made for a number of days, perhaps a week or more, in order to obtain Mr. Cleveland's consent to take currency from Chamberlain. Chamberlain did not want the order and would not take it unless Cleveland could secure the receiver's check in payment. I was not present when the order was finally granted, and do not know who was there.

N. J. EMMONS.

Thomas L. Ogden, a witness produced, sworn, and examined on behalf of defendants, testified as follows:

Ques. Did you ever, as solicitor in this cause, have notice of any time or place at which any of the applications for payment of money on the Cleveland judgment, so called, would be made and heard by the court and judge?

Ans. I never had any to my recollection. My belief is that I never had any.

Ques. Did you ever, as solicitor in this cause, stipulate or consent that any of these payments should be made on the Cleveland judgments?

Ans. I did not.

Cross-examined by Mr. Brown:

Ques. Did you have a conversation with Mr. Emmons, in which he stated to you that an application was pending before the district judge for a payment upon the Cleveland judgment?

Ans. I might have had such conversation, but I have no recollection of it.

THOMAS L. OGDEN.

315 Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

The testimony of D. W. Keyes, a witness produced, sworn, and examined before H. L. Palmer, auditor, appointed by order of the court to report upon the account of Hans Crocker, receiver, and the exceptions thereto.

Dwight W. Keyes sworn:

Ques. Are you in the employment of the Milwaukee and St. Paul Railway Company? If so, in what capacity?

Ans. I am, and keep the general books of that company.

Ques. Look at statement Exhibit E, before the auditor, item No. 38, and state of what items that charge is composed?

Ans. It is made up of the following:

| | |
|---|---|
| Paid Crocker, receiver, April 23d, 1864 | $68,285 50 |
| Charge for the earnings of the western division from June 1st to June 12th, inclusive | 20,761 17 |
| Mileage on the western division from April 25th to May 1st, 1863, inclusive | 2,396 48 |
| Same from May 1st to June 1st, 1863 | 11,958 02 |
| Same from June 1st to June 12th, 1863 | 4,672 79 |
| Advance charges on goods in transit, June 13th, 1863. | 1,886 8( |
| Total | 109,950 82 |

Ques. Can you furnish the auditor a statement of the receipts and disbursements for the months of April and May, 1863?

Ans. Yes, sir.

Ques. Can you make a statement of items comprising the charge $41,675 22 in the receiver's report mentioned, and also the item of twenty-nine thousand and odd dollars?

Ans. I can.

Adjourned to 2 o'clock p. m.

316 AUGUST 23, 1863.

D. W. Keyes continued:

The item mentioned in the last preceding question is an entry of $29,157 45, is made up of the following:

| | |
|---|---|
| Net earnings of the western division from April 25th to April 30th, 1863, both inclusive | $4,608 58 |
| Net earnings of western division from May 1st to May 31st, 1863, both inclusive | 24,548 87 |

This is net earnings without any charge for the use of rolling stock. Exhibit G is a copy of the voucher taken by the receiver therefor.

Ques. Can you furnish a statement of the receipts and disbursements for the months of April and May, 1864?

Ans. Yes; I have them here. Exhibit H is a statement of the receipts and disbursements of the eastern division for the month of April, 1864, and the paper now produced and marked Exhibit I is a similar statement of the receipts and disbursements of the eastern division for the month of May, 1864.

DWIGHT W. KEYES.

Adjourned to the 25th of August, 10 a m.

AUGUST 25TH, A. M.

Parties present as before.

Mr. Brown moves, on behalf of the receiver, that all testimony as to the relative rights of parties to the suit, and others, to the earnings of the road, be excluded; and that the investigation by the auditor be hereafter limited to ascertaining the correctness or incorrectness of the accounts of the receiver, as rendered up to June 1st, 1864.

Mr. Cary, on behalf of the complainant in this case, moves to exclude all testimony relating to the relative rights of the eastern and western division of the road, in the fund arising from the appointment of the road since the appointment of the receiver; also all testimony relating to moneys which the receiver might, or ought to have had in his hands, which is not now, or has not been in his hands, and that the investigation be confined to ascertaining the actual
317 amount of money now in his hands, subject to the order of the court, which may be applicable to the payment of interest on the mortgage in this suit.

Argued by Mr. Brown and Mr. Cary for motion, and Mr. Carpenter opposed.

Motion overruled and exception taken by Messrs. Brown and Cary.

Adjourned to Sept. 2, at 10 a. m.

SEPTEMBER 2, 1864, at 10 a. m.

Parties present.

On motion made in behalf of the Milwaukee and Minnesota Railroad Company, and by reason of the absence of Messrs. Carpenter and Cary, and Mr. Brown on behalf of the receiver, objecting thereto.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE R. R. COMpany and others.

Examination of witness taken in pursuance and by virtue of our order of reference in this cause of the 28th of April, 1864, August 8th, 1864. Present, H. L. Palmer, John W. Cary, for complainant, and the Milwaukee & St. Paul Railway Company, James S. Brown, of counsel for receiver, and M. H. Carpenter. of counsel for the Milwaukee & Minnesota Railroad Company and Alexander Fleming.

Testimony of Hans Crocker, a witness produced, sworn, and examined before H. L. Palmer, auditor, appointed by order of the court to report upon the account of Hans Crocker, receiver, and the exceptions thereto.

Hans Crocker, being produced and duly sworn and examined, testified as follows:

The books now produced, viz: Ledgers A and B, journals
318 A, B, and C, cash books, operating expenses; books A and B contain my accounts as receiver; they are all the books I have, except the vouchers containing general accounts; have other books, such as warrant books, but these contain all the accounts of receipts and expenditures.

Ques. To the best of your knowledge and belief, do they contain just, full, and correct accounts of your receipts and disbursements as receiver?

Ans. They do.

Ques. Are these two basketsful of papers your vouchers; are they correct and true vouchers for disbursements on your part?

Ans. Yes, sir.

Ques. Were the accounts filed by you in this cause correct, true, and just accounts of your receipts and disbursements as receiver?

Ans. I think they were; they were intended to be.

The receiver now offers the vouchers above referred to, and submits to such course in regard to opening, reading, and exhibiting as shall be prescribed by the auditor.

Cross-examined by Mr. Carpenter:

I took possession on the 11th of June, 1860, of the road. I was not appointed receiver in this cause until July term, 1860. I was first appointed in the Howard case.

Ques. What part of the duty, as receiver, have you personally performed, or have you actual personal knowledge of?

Ans. I have been in the office here, and have had general charge of the business; the various branches of the business have been performed by parties having charge of these branches.

Ques. What agents or employees have you had; that, is what class of agents, and what have been their respective duties?

Ans. Edward H. Goodrich has been general manager, and had charge of operating the road; Mr. A. G. Miller, W. L. Hinsdale and D. W. Keyes have been cashiers; the duties of cashiers were receiving and paying out moneys. A general book-keeper was E. C. Jennings, whose duty it was to keep the books; J. M. Kimball has been general ticket agent, whose duty was to perform the general
319 duties of that office, and keep an account of the sale of tickets on this and other roads; had a general freight agent, having a similar charge of the freight department; also a paymaster; Mr. Keyes was first the paymaster, afterwards H. R. Hatmaker, whose duty was to pay off the men employees; William R. Sill, for part of the time has had charge of repairs on the road; D. J. Whittemore has acted a part of the time as engineer; C. L. Rice has been master of repairs to locomotives; W. E. Kittridge has been master of repairs and construction of cars; S. H. Bailey has been roadmaster, eastern division; G. H. Daniel has been roadmaster, western division; William P. Cosgrove, telegraph operator; Walter E. Kittridge has been trainmaster a part of the time; L. Everingham has been local freight agent; eastern agents, George F. , Boston; J. B. Worstell, N. Y.; W. W. Wilson, travelling agent; F. , advertising agent; conductors, engineers, mechanics, station agents, laborers, and clerks in the different offices.

Ques. What has been the duty to which you have given your attention personally.

Ans. I have made contracts, settled matters of right of way, made payments, advised Mr. Goodrich from time to time about the management of the road; nothing else.

Ques. Have you personal knowledge of the correctness of, and which, and how many, of the accounts and vouchers been offered by you?

Ans. Some of them I know to be correct; of others, I have only the knowledge derived from the general mode of ascertaining.

Ques. Have you ever kept, or can you make out an account of your receipts and disbursements, as receiver in this cause, of the eastern division?

Ans. I can do it by an arbitrary rule of my own; there is an account kept on that basis.

Ques. What is that basis?

Ans. In answer to that, I quote from my report for 1862, page 4,

as follows: In the tables accompanying the manager's report will be found the division of earnings between the eastern and western divisions of the road. In the absence of any agreement be-
320 tween the parties representing these two interests, as to the division of earnings and expenses, I have followed the method which existed when I took possession of the road, although the receipts are divided by allowing 105 parts to the western and 95 parts to the eastern division; all business commencing and terminating on any division is credited to that division; all other business is divided pro rata per mile; the expenses are divided into local mileage and extraordinary; local is referring to the division on which they accrue, embracing machinery, buildings, renewal of track, &c.; the mileage expenses embrace locomotive and car repairs, locomotive and train services, fuel, oil, stationery, passengers, agencies, &c.; the extraordinary expenditures are fencing, right of way, real estate, encumbrances, rolling stock, &c.; this may not be the proper mode of arriving at the earnings and expenses applicable to the two divisions, but in the absence of any agreed basis, I know of no other one I could have adopted. In my annual report of January 1st, 1861, I remarked, "it is not for me to determine the proportion of net earnings belonging to each division; that must be determined by the court, or by the agreement of parties who may hereafter become the owners of the two divisions of the road."

Ques. By this account upon this basis, what amount in all have you received belonging to the eastern division, gross receipts, from June 11, 1860, to June 1st, 1864? Specify, if you can, the amount received in each month.

(Objected to, because it has already been shown that the receiver took possession of the entire road under an appointment in the Howard case, and that the additional appointment in this case did not change his duties as to the mode of keeping his accounts, nor authorized him to adjudicate upon the conflicting rights of the parties interested in the receipts of the road. Overruled and exception taken.)

Ans. My accounts are filed for the entire road, and to make that distribution and division will require some time to collect it.

Ques. What time will enable you to present before the auditor such accounts of gross receipts upon the basis named, showing the services from which you received the money?

321 Ans. It will take about ten days to make it.

Ques. Will you prepare and present to the auditor such account?

(Objected to by Mr. Brown.)

Ans. I will have Mr. Keyes do it as soon as possible.

Adjourned to Monday, 15th, 10 a. m.

AUGUST 15, 1864.

Parties present as before.

Adjourned to Thursday, 18th, at 10 a. m.

AUGUST 18, 1864.

Parties present as before.
Adjourned to the 19th, 1864, at 10 a. m.

AUGUST 19, 1864.

Parties present as before.

Hans Crocker's examination continued.

I now produce, in answer to the question propounded Aug. 8, 1864, the statement hereto annexed and marked Exhibit C, and also the paper marked Exhibit D, which forms a part of, and is a general recapitulation of the statements contained in Exhibit C.

Adjourned on motion of Mr. Prentiss, for Mr. Flemming, Milwaukee and Minnesota Railroad Company, to Monday, August 22, 1864, at 10 o'clock a. m.

AUGUST 22, 1864.

Hans Crocker continued:

The Milwaukee and St. Paul Railroad Company took possession of the railroad on the 13th day of June, 1863. That company took possession of a shop for repairing engines, a shop for repairing cars, and a blacksmith shop. These were all in Milwaukee. I have an inventory of the supplies on hand at the time the Milwaukee and St. Paul Railway Company took possession of the road. I can furnish a copy of the inventory of supplies then on hand. The inventory is on file in this court.

Ques. Was the St. Paul and Milwaukee Railway Company charged, or has it been charged in any account, with the amount of supplies on hand at the time it took possession?

322 Ans. No; there has been no charge made in any of the accounts.

Ques. Was the eastern division in any way credited with this amount?

Ans. No.

Ques. Has the eastern division been credited, or the Milwaukee and St. Paul Railway Company been charged, with anything for the use or rent of the repair shops and tools?

Ans. Nothing. No entries made.

Ques. Has the Milwaukee & St. Paul Railway Company any other repair shops, except these at Milwaukee, on the line of this road?

Ans. At La Crosse and New Lisbon they have some.

Ques. Has this company used these shops and tools in Milwaukee since the 13th of June, 1863?

Ans. Yes, they have.

Ques. Were the tools in the shops in as good condition when the company took the road as they now are?

Ans. I presume they were. They are constantly changing; new ones all purchased, and repairs made daily.

Ques. Was any charge to that company, or credit to the eastern division, made for the amount of tools which that company took possession of with the shops?

Ans. No; there was no entry made. None of those entries were made, because I could not divide the net earnings of the road, or determine what of these things belonged to the eastern division?

Ques. Had any of these tools, which were passed over to this company, ever been used before that time elsewhere than in the shops at Milwaukee?

Ans. Not that I know of.

The paper now presented, marked Exhibit E, is a statement of the earnings and expenditures of the eastern division of the La Crosse and Milwaukee railroad, from June 13th, 1863, to June 30th, 1864, inclusive.

Ques. In this account, marked Exhibit E, is the item, repairs, tools, &c., $6,978 03, for the tools in the shops at Milwaukee?

323 Ans. I cannot answer as to all; I presume they are, but I cannot tell.

Ques. Have you personal knowledge of the first seven items of the account marked Exhibit E, or of any, and what portion thereof?

Ans. I have some personal knowledge of them, but not generally. These expenditures were made under the management of the Milwaukee and St. Paul Railway Company.

Ques. Have you ever settled with that company, so as to recognize the correctness of, or be bound by, the amounts of any of these first seven items?

Ans. I have not. I suppose all those questions are to be determined by the court.

Ques. Have you made any settlement in regard to any of the items of this account?

Ans. I have not.

Ques. Have you any personal knowledge that the exact amount of any of these items is correctly charged in this account?

Ans. I have no personal knowledge, but have no doubt they are correct.

Ques. Has this company, since June 13th, 1863, used the materials on hand when they took possession, in the repairs of locomotives and cars?

Ans. They have.

Ques. Do you know upon what rolling stock the repairs were made, which are charged in items 5 and 6, in Exhibit E?

Ans. I cannot tell.

Ques. Is any portion of the last item "Balance to credit eastern division," now in your hands?

Ans. No, sir.

Adjourned to 2 o'clock p. m.

AUGUST 22, 1865, 2 p. m.

Parties present as before.

Mr. L. J. Higby is in possession of the elevator here at Milwaukee under a lease. The first lease was from S. Chamberlain, when he

324 was in possession of the road, and afterwards confirmed by the Milwaukee and Minnesota Railroad Company in 1858 or

1859; I think in 1859; then by me as receiver, subject to the order of the court, or the termination of my office. The Milwaukee and St. Paul company continued the same lease.

Ques. When did you, as receiver, first renew or give any lease of the premises to Higby?

Ans. Some time in the summer of 1860, soon after I took possession. It was a verbal renewal, or confirmation of the old lease. We went before Judge Miller, and he concluded it was best to let it remain as it stood. This summer, since April, 1864, I gave him a written confirmation of the lease. The date of this was on the 3d of May last.

Ques. Had you, previous to giving this confirmation of the lease, May 3d, 1864, received notice or request from, or on behalf of the Milwaukee and Minnesota Railroad Company, that you should take possession of that elevator as receiver?

Ans. I received such notice, but the date I cannot recollect.

Ques. Did you not receive it previous to giving that written confirmation to Higby?

Ans. I cannot tell, or recollect the date it was served.

Ques. Was that confirmation, which you gave to Higby, actually made and delivered before the 1st day of June, A. D. 1864?

Ans. I cannot tell, but think it was before the first day of June.

Ques. What rent has Higby paid you for the use of the elevator?

Ans. He pays no rent; he was running it, and handling certain freights for the road, free of expense.

Ques. Could not that elevator be rented so as to produce a rent?

(Objected to:

1st. Because the elevator was built and belonged to Mr. Higby.

2d. Because it was in possession of no one who was a party to, or claiming under a party to this suit, at the time Crocker took possession of the road as receiver.

3d. Because the receiver never acquired possession in fact,
325 or was authorized by the court to take possession of Mr. Higby's elevator.

4th. Because the order did not allow the receiver to collect any dues of the La Crosse Railroad Company, or take possession of any of its property, except the road itself, its rolling stock, and the depots in possession of the company or the defendants, and used in connection with the road.

5th. Because the Milwaukee and Minnesota Railroad Company, if they had any interest in the question, are stopped by their own confirmation of the lease.

Received, subject to the objection.)

Ans. If the company owned it, it could be rented. If I, as receiver, had the control of it, I could rent it; cannot say how much.

Ques. What, in your opinion, would be a fair monthly rent for the elevator?

Ans. I never had any offer for it, and cannot tell. About the average quantity of wheat received in that elevator during the year is 15,000 bushels per day.

Ques. What, in your opinion, does it cost per day to operate the elevator?

Ans. Probably would average $30 per day; can't tell with any certainty. I don't know what it costs.

The direct examination of this witness is here suspended by consent.

Examination of Hans Crocker, receiver, continued:

Ques. Since the 13th of June, 1863, have you been in actual possession, and have you in fact operated the eastern division and its rolling stock, receiving the revenues thereof, and disbursed the expenses of operating the same?

Ans. From the 13th of June, 1863, to May, 1864, the St. Paul company was in possession of and operating the eastern division of the road under the order of the court. Since then it has been in my possession.

Ques. Have you, since May 1st, 1864, actually operated the eastern division and its rolling stock, and have you in fact received the revenues arising therefrom, and disbursed the expenses of operating the same?

326 Ans. Since the 1st of May, 1864, I have operated the road. There is a part of the balance of the earnings in the hands of the St. Paul company not paid over.

Ques. From and after the orders of the court of the 28th April, 1864, requiring the St. Paul company to deliver the possession of the eastern division to you, what change in fact was made as to the possession and operation of the eastern division?

Ans. The possession of the eastern division was surrendered to me the same as I surrendered the road to them. It was surrendered to me by Mr. Hughes or Mr. Goodrich, and I took it.

Ques. I do not speak of theories or constructive possession and operation, I ask for the actual tangible visible fact, and do you say that since May 1st, 1864, you have been operating the eastern division and its rolling stock?

Ans. I say yes.

Ques. Have you been actually in the receipt of the revenues of the eastern division since May 1st, 1864?

Ans. About the 1st of May, when I took possession of the eastern division of the road, I found that under the order of the court, and the claim of the St. Paul company, that the rolling stock of the eastern division would not be sufficient to operate that division. It would have been necessary for me to open a new set of books and employ a new set of officers had I determined to run the eastern division independent of the western division. I therefore told Mr. Goodrich that I wanted him to operate the eastern division of the road for me, to retain the necessary officers, or to consider them in my employment jointly with the St. Paul road, and keep the accounts as they had been kept by the St. Paul company the year previous, showing the proportion of earnings applicable to each division. I consider that arrangement the best arrangement for the eastern division. To have

opened a new set of books would have required a large expenditure, and would have taken a great deal of labor and time, at least one month, before they could have been got up.

Ques. In making this arrangement, was Mr. Goodrich then acting on behalf of the Milwaukee and St. Paul Railway Company, and was your arrangement really with that company, through Mr. Goodrich, as its agent?

327 Ans. Mr. Goodrich was at that time the general manager of the Milwaukee and St. Paul Company; I made the arrangement with him as the manager of the road of the St. Paul company, but so far as he was to act for me, it was made with him personally.

Ques. Are the earnings of the eastern division since May 1, 1864, received by Mr. Goodrich, as your personal representative, or are they received by the Milwaukee and St. Paul Railway Company?

Ans. They are received as they had been received before that time by the St. Paul company, or by their receiving officers.

Ques. Is it true, then, that you are actually in the receipt of the revenues arising from the eastern division since May 1, 1864?

Ans. The revenues of the eastern division are subject to my order, and have been since May 1, 1864.

Ques. With whom have you kept your bank account as receiver since June 11, 1860?

Ans. With the Wisconsin Marine and Fire Insurance Company's Bank.

Have you, as receiver, made deposits or kept a bank account elsewhere than at that bank?

Ans. From time to time I have had small deposits with the Merchant's Bank in this city, mostly arising from collections made by the Merchant's Bank.

Ques. By whom are the conductors, engineers, and other employees engaged in the actual operation of the eastern division since May 1, 1865, employed and paid?

Ans. They are the same men who were employed in the same capacity by the St. Paul company when I took possession of the road; ever since I took possession of the road Mr. Goodrich has always employed these men; they are paid by the St. Paul road, and the proportion is charged to the eastern division.

Ques. On and after April 28, 1864, was any change whatever made in the actual management of the eastern division, except the method of keeping the accounts by the St. Paul company? If so, what?

328 Ans. The road was running just as it had been before; accounts kept between the two divisions, earnings and expenses divided pro rata.

Ques. Have you, since June 13th, 1863, ever demanded of the St. Paul company the possession of the rolling stock that was on the road when you were appointed receiver and took possession, except the forty box cars mentioned in the land grant decree? If so, when, where, and upon what officer or person of said company did you make such demand?

Ans. About the 29th or 30th of April, 1864, at the office of Cary & Pratt, in Milwaukee, I stated to Mr. Hughes, the president of the St. Paul company, the substance of the orders restoring the eastern division to me, and demanded possession of the road and of the rolling stock; I went into no particulars as to rolling stock; I wanted to get all I could; he replied: "You shall have possession of the road and all the rolling stock that the eastern division is entitled to."

Ques. Have you ever made any other demand for any part of the rolling stock mentioned in the last question, except that mentioned by you in your last answer?

Ans. I have had frequent conversations with Mr. Hughes since that time, in all of which he has reiterated what he said before, that the rolling stock on the road at the time I took possession of the road, and a portion of the stock bought and built by me belonged to the western division—the land grant road.

Ques. How much and what rolling stock did the St. Paul company surrender to you upon this demand?

Ans. I cannot answer that without going into figures; I can ascertain and furnish it.

Ques. Did they surrender to you any locomotive? If so, what is its number or description?

Ans. They surrendered to me, I think, about seven locomotives, but I cannot give the numbers.

Ques. State how, in what manner, and in whose presence, this rolling stock was surrendered to you by the St. Paul Company; how many locomotives, and how described by numbers, or otherwise, and how many, and what passenger and other cars; giving the numbers and description of each.

329 Ans. It was surrendered by Mr. Goodrich in the office of the company; no one was present but Mr. Goodrich and myself; the rolling stock was not in view; it was on the road; particular locomotives and cars were not specified; the statement hereto annexed and marked Exhibit N N shows the amount of interest in rolling stock then transferred to me.

Ques. Was it not understood before you made this demand that the eastern division and rolling should remain in the possession of the St. Paul company, and be operated as you have stated? and was not the demand and the pretended surrender of possession to you merely formal?

Ans. There was no such understanding at all, direct or indirect, or otherwise, and the arrangement was the best that could have been made for the eastern division.

Ques. Did you accept what took place between you and Goodrich as a delivery of possession to you?

Ans. I did.

Ques. What day did this take place?

Ans. I think it was the last day of April, 1864.

Ques. On what day was the arrangement made between you and the St. Paul company that you have stated in relation to their operating the eastern division?

Ans. I think it was on the same day.

Ques. Is not the St. Paul company operating a road in competition with the eastern division from Milwaukee by way of Columbus to Portage City?

Ans. They are.

Ques. Is not the pecuniary interest of that company, as the owner of a competing line of road, directly opposed to the interest of the eastern division?

Ans. I suppose it is.

Ques. Since the completion of that company's line of road, are not the agents and runners, both at Milwaukee and La Crosse, employed by the St. Paul company to divert business from the eastern division?

Ans. I know nothing of that at all.

Ques. Are there any runners or agents employed by you at Milwaukee or La Crosse to compete with the St. Paul company as to business between Milwaukee and Portage?

330 Ans. I have none.

Ques. Since the completion of that company's line, has not the through travel and freight ceased on the eastern division, so far as it is in the power of that company to produce that result?

Ans. The natural tendency of passengers and traffic would be to go on a through line, either to Milwaukee or La Crosse, and such has been the result.

Ques. What was the average earnings of the eastern division per day for ten days before, and ten days after, the St. Paul company commenced operating their competing line, as near as you can state from your knowledge or recollection?

Ans. I will furnish a statement.

Examination suspended.

SEPTEMBER 12, 1864.

Hans Crocker—Re-direct examination resumed:

Ques. Since the completion of their road by the St. Paul company, do trains run through from Milwaukee to La Crosse, or from La Crosse to Milwaukee, as they did before that time over the eastern division?

Ans. They do.

Ques. Since the completion of their road by the St. Paul company, do not the trains that leave La Crosse for Milwaukee avoid the eastern division, and come from Portage to Milwaukee over the St. Paul company's road, by way of Watertown?

Ans. The through trains were from La Crosse to Milwaukee by way of Watertown, but the passenger trains make their connections east and west at Portage.

Ques. Is not the St. Paul company now using the rolling stock on the road when you were appointed receiver, except the forty box cars on the Watertown branch or division of the road, in connection with the western division?

Ans. Substantially they are, but they furnish the eastern division of the road all the cars and engines necessary to do the business of the eastern division.

Ques. Can passengers now leave Milwaukee for La Crosse, over the eastern division, and go through without change of cars?

Ans. They cannot.

331 Cross-examination by Mr. Brown:

Ques. Can passengers leave Milwaukee on the eastern division and have a connection, and go through to La Crosse in the same time as passengers leaving Milwaukee on the St. Paul line?

Ans. They can.

Ques. When the St. Paul company took off the rolling stock, claimed by them as their own, had you enough stock left to operate the eastern division?

Ans. No.

Ques. Have they furnished the rolling stock necessary to operate the eastern division since that time?

Ans. They have.

Ques. What proportion of the whole rolling stock now used on the eastern division have they so furnished?

Ans. My answer to that will be found in Exhibit N N, hereto annexed.

Ques. How long since they commenced operating their road as a through road?

Ans. Since the 29th of August, 1864.

Ques. Is there any conflict of interest between the St. Paul Railway Company and the eastern division, except for through business from Milwaukee to La Crosse, and are not their interests as to all other business identical?

Ans. There is no necessity for any conflict between them. Their interest as to all local business are identical?

Ques. Can you, as receiver of the eastern division, through connection with any other road than the St. Paul road, do through business?

Ans. If you mean through to the Mississippi river, I say no.

Ques. Are there any means by which you, as receiver, can share in the through business, except by voluntary arrangement with the St. Paul company?

Ans. There are none.

Ques. On May 1st, 1864, at the time you made your arrangement with the St. Paul company, and until the 29th of August last, had they any through route from Milwaukee to the Mississippi except over the eastern division, and did not their entire through

332 business during that period pass over the eastern division?

Ans. No; they had no other through route, and all their through business, to and from Milwaukee, passed over the eastern division.

Ques. Was there any company or person, except the St. Paul company, with whom, on the 1st day of May last, you could have made

arrangements for the additional rolling stock necessary to operate the eastern division?

Ans. I think none.

Ques. Was there any other mode, except the one followed by you, by which you could have procured such rolling stock?

Ans. None that I know of.

Ques. Was this arrangement made by you with the St. Paul company designed to be a permanent arrangement, or only temporary, until the court should meet again, and pass upon the claim of that company to the rolling stock, and decide upon what the receiver should do in the premises?

Ans. It was a temporary arrangement, until the ownership of the rolling stock should be determined and settled, or I directed otherwise by the court.

Ques. Was it a matter of choice or necessity imposed by the non-surrender of more of the rolling stock by the St. Paul company?

Ans. It was a matter of necessity, and I am satisfied that it was the best arrangement that could have been made by the eastern division.

A stipulation is presented and hereto annexed and marked Exhibit O O.

Ques. Did you first take possession of the entire road under an order in a case in which Sebre Howard was complainant, a copy of which order is set forth in Exhibit marked O O?

Ans. I did on the 11th of June, 1860.

Ques. How long were you in possession of the road under the order alluded to, before you were notified of you appointment in this case?

Ans. Nearly one month.

Ques. Did you in good faith continue to keep your accounts
333 of the whole road as an entirety, honestly believing that it was the province of the court, and not yourself, to decide upon the conflicting claims of the various parties to the earnings?

Ans. Yes; and for a further answer I refer to my direct testimony in answer to the question put to me, to be found on sheet 2 of my testimony.

Ques. Had the parties interested in the second mortgage and the eastern division access to your books at all reasonable times when they desired, and did they. or any of them, at any time prior to your surrender to the St. Paul Railway Company, complain of the manner in which the accounts were kept?

Ans. Mr. P. Dow was in possession of the road under Mr. Chamberlain when I was appointed receiver. He is the only one representing that division who appeared to take any interest in the operation of the road. He had at all times access to the books and accounts kept in the office, and knew about the manner in which they were kept, and the division of earnings and expenses made. I consulted him from time to time as to steamboat and other contracts, the purchase and manufacture of rolling stock, and I never heard him find any fault with the management or operation of the

road in those respects. He was entirely satisfied with the method of keeping the accounts. They were kept as they were kept by Mr. Dow, when he was in possession of the road.

Ques. Did you file accounts from time to time in the court showing the operation of the road?

Ans. Yes.

Ques. And did the court, or either of the parties to this suit, object to the manner in which the accounts were kept?

Ans. Never to my knowledge.

Ques. Did you, on the 13th day of June, 1863, surrender possession of the road to the St. Paul Railway Company, in obedience to an order made in the case of Charles Howard, assignee, a copy of which order is hereto annexed and marked Exhibit P P, and of other orders made in this case, and in the western division case?

Ans. Yes.

Ques. Was the surrender made by you in the full belief
334 that you had no option, but was bound to obey the orders of the court in that particular?

Ans. It was.

Examination of Hans Crocker, receiver, continued by defendant:

Ques. In your annual report of the operations of the road for the year 1861, you appear to have paid into the sinking fund the sum of $12,000. Why did you discontinue making these payments to the sinking fund?

Ans. Because the first mortgage bond of the eastern division could not be bought at par as contemplated by the sinking fund mortgage.

Ques. Are you familiar with the provisions of the sinking fund mortgage to which you have alluded?

Ans. I have read it, and think I am familiar with it.

Ques. In making the payment of $12,000, did you consider yourself, as receiver, to be acting under and by the provisions of that sinking fund mortgage, or any order or orders of court appointing you receiver, by which you were directed to pay out of the receipts the interest accruing on said first mortgage?

Ans. I made the payment under the orders appointing me receiver, and the sinking fund mortgage.

Ques. You mean then to say that order of the court, and under the provisions of the mortgage, you considered it proper to pay, and did pay, the $12,000 mentioned in your report for the year 1861?

Ans. Yes.

Ques. Being governed by that mortgage, and therefore acquainted with its provisions, is there any provision which directs that the annual payment of $12,000 shall only be made to the Trust company, when it can purchase the bonds at or under par?

(Objected to because the mortgage is in evidence, and the testimony called for is immaterial. Objection overruled and exception taken.)

Ans. What I referred to in my previous answer is this, that the moneys can't be invested unless the first mortgage bond can be bought at par, or under.

335 Ques. Did you ever make any application to the court for instructions as to whether you were to continue making these payments to the sinking fund?

Ans. Last fall I made an application to the court in writing, stating the amount due on the sinking fund, and that Mr. Lawrence, president of the United States Trust Company, had applied to me for the payment of the balance due on the sinking fund. I also stated that there were funds then in the hands of the Trust company which they could not invest by reason of the first mortgage bonds being above par; that I had been informed that Milwaukee city bonds, secured by mortgage on a portion of the La Crosse road, could be purchased at less than their face; and that to all intents and purposes it was as well to all the subsequent creditors of the road that these bonds should be paid as the first mortgage bonds, as the extinguishment of so much prior debt. In this application I asked for authority to authorize the United States company to invest the sinking fund in the purchase of those city bonds, and that I should be authorized to pay the balance due on the sinking fund. Judge Miller declined acting upon the matter at that time, stating that the court would meet in January, when that matter could be heard and argued. Paper hereto annexed, and marked Exhibit W W, is a statement of the earnings of the eastern division for the ten days before and ten days after the St. Paul company commenced operating their competing line mentioned in my former testimony.

The complainant here offers a copy of a letter from Bronson, Soutter, and Prentiss Dow to Selah Chamberlain, and the answer of Chamberlain thereto, which are hereto annexed and marked Exhibit X X, to which Mr. Carpenter objects as irrelevant and immaterial.

(Objection overruled, and Mr. Carpenter excepted.)

The complainant offers the advertisement of sale by the marshal in the land grant case, order confirming sale, description of premises conveyed by the marshal's deed to the purchasers, and their conveyance to the Milwaukee and St. Paul Company, and the order of the 12th of June, 1863, made in the land grant case, which
336 are hereto annexed and marked Exhibits Y Y, 1, 2, 3, and 4.

Hans Crocker's examination continued:

In addition to the rolling stock referred to in Exhibit N N, the Milwaukee and St. Paul Railway Company have furnished us many engines, passenger, and baggage cars as have been needed to do the business of the eastern division; say, about four or five engines, four passenger cars, and as many baggage and express cars.

Mr. Brown presents and puts in evidence the several orders of the court, certified copies of which are hereto annexed, and marked respectively Exhibits E E E, F F F, G G G, H H H.

Ques. Have you had any arrangement, express or implied, with any of the persons with whom you have kept your funds as receiver, for any allowance, advantage, or benefit, directly or indirectly, in any way or manner, or upon any terms, conditions, or contingencies, for or on account of such deposit, or in any way resulting therefrom?

(Objected to as a wanton insult offered by counsel to a witness on the stand, he fully believing that there is no fact in the case justifying any such question, but willing to avail himself of an opportunity of insulting the witness.)

(Objection overruled and exception taken.)

Ans. I have no such arrangement or understanding about the matter, either present, past, or future.

Ques. Averaging the time that you have been receiver, what, as near as you can state from recollection, has been the amount of funds in your hands as receiver?

Ans. I cannot tell that. Sometimes I have overdrawn my account, and sometimes have had a large surplus on hand. In the fall and winter of 1860, when currency was very much depressed, I had at one time about $100,000 on hand. I will furnish a statement of the monthly balances of my bank account as receiver, from June 1st, 1860. Paper hereto annexed, and marked Exhibit O O O, is a statement of such balances.

Ques. Have you ever applied to the court for leave to pass your accounts, and to pay any balance into court?

Ans. I have not.

H. CROCKER.

337 SEPTEMBER 22, 1864.

The receiver, by his counsel, now claims that he be allowed the usual percentage upon receipts and disbursements, or that he may have other compensation as is usual and just, and that the same be made as credits to him against any balance in his hands.

Second, also that he be allowed for such other charges and disbursements against him as receiver, for legal services and expenses, as he may here present, so far as they are just and reasonable.

SEPTEMBER 23, 1864.

Mr. Carpenter files papers hereto annexed, and marked Exhibit K K K.

SEPTEMBER 24, 1864.

Parties present as before.

Mr. Brown, on behalf of the receiver, files statement and claim hereto annexed, and marked Exhibit P P P.

Selah Chamberlain, sworn on behalf of the receiver, testified as follows:

Ques. Were you cognizant of the fact of the payment of certain sums of money on the Cleveland judgment?

(Mr. Carpenter objects to the question as immaterial, irrelevant, and incompetent. Objection overruled, and exception taken.)

Ans. I was; I knew at the time this was paid.

Ques. Do you know whether or not counsel for the Milwaukee and Minnesota Railroad Company assented to the payment by the receiver of any sums, and what sums, upon that judgment? If so, please state who it was, and what were the circumstances.

(Objected to, because no stipulation could have any effect unless the same was in writing; and if it was in writing, it should be produced; and as immaterial and incompetent. Overruled, and exception taken.)

Ans. About the time the first order was granted for the
338 payment of twenty-eight thousand and some odd dollars, in April, 1861, I had a conversation with Mr. Carpenter in relation to it, and he said he would not oppose the getting the order, and would like to have it granted, because the money was going to Mr. Cleveland, and Cleveland was owing him some $4,000, and had promised that he would pay it if he got a payment from me on the judgment; one of the orders that was granted after that, for the payment of ten thousand dollars, I believe in June, 1861; Mr. Carpenter wanted the order granted, for Mr. Cleveland was owing him a thousand dollars, which he promised to pay when he got it; I don't recollect of having any other conversation with Mr. Carpenter pertaining to the orders. Of the money obtained on the first order, about $22,000 in the receiver's checks were paid to Mr. Cleveland; the second order for $10,000, the money was paid over to Mr. Cleveland on the Cleveland judgment.

Cross-examined by Mr. Carpenter:

Ques. The order for the payment of the twenty-eight thousand and odd dollars was made April 22d, 1861; how long before that date did you have this conversation with Mr. Carpen ?

Ans. The matter was talked up, for several weeks before we got the order, among the counsel who were trying to get it. I cannot state the exact time of the conversation with Mr. Carpenter.

Ques. Where was the conversation?

Ans. It was on East Water street, near Wisconsin street; he had come down from his office.

Ques. Who was present?

Ans. Mr. Carpenter and myself.

Ques. Was any one else present?

Ans. I don't recollect as any one else was present.

Ques. Did you apply to him upon the subject, or he to you?

Ans. I believe Mr. Carpenter spoke to me about it, and wanted to know how we were getting along in getting the order.

Ques. Had you ever had any conversation with him before upon the subject?

339 Ans. I don't recollect that I had.

Ques. What reply did you make to the question?

Ans. I think I said the prospect was we should get it; that Mr. Lynde and Mr. Van Dyke had it in charge.

Ques. What was next said, and by whom?

Ans. I don't recollect; I have given the substance of the conversation, as near as I can recollect it.

Ques. Can you, from present recollection, state positively to anything else that was said, either by you or by him in that conversation? If so, relate it?

Ans. Mr. Carpenter said that Mr. Cleveland was owing him $4,000

which he had promised to pay when he made a collection, or got a payment from me, and that he (Mr. Carpenter) wanted the money.

Ques. Can you recollect anything else that was said by you or by him on that occasion?

Ans. I don't know that I do.

Ques. The order for the payment of $10,000, was made June 29, 1861; how long before that was this second conversation that you have testified to with Mr. Carpenter?

Ans. It was between the time when counsel had applied for it and before it had been got.

Ques. Where was the conversation, and in whose presence?

Ans. I cannot answer that question, for I don't recollect.

Ques. Have you no personal recollection of where we were, whether indoors or outdoors, or out walking or sitting, or other circumstances attending that conversation?

Ans. I could not say where it was, but my impression is that it was in Mr. Carpenter's own office, where I went to inquire for Mr. Cleveland.

Ques. Who commenced the conversation at that time in regard to the money order?

Ans. I think that I did myself; I told him that we were trying to get another order; I wanted to find Mr. Cleveland, and thought he was then here in town, and to ascertain whether he would take currency, which was then very bad; Mr. Carpenter told me Mr. Cleveland was in town, but was stopping at a private house.

340 Ques. What else did Mr. Carpenter say, if anything, at that time?

Ans. Mr. Carpenter said that Mr. Cleveland was owing him $1,000 which he had promised to pay when he got the next payment from me, and on that account he would like the money obtained.

Ques. Did you go to Mr. Carpenter's office for any other purpose than to ascertain whether or not Cleveland would take currency from you?

Ans. I went there to ascertain where I could find Mr. Cleveland; my object to find Mr. Cleveland was to ascertain whether he would take currency; I had no other object.

Ques. Is this all that was said at that time? If not, repeat it.

Ans. I don't recollect of anything else.

Ques. Did you ever apply to Mr. Carpenter to stipulate on behalf of the Milwaukee and Minnesota Railroad Company for the payment of any sum whatever out of the funds in the receiver's hands?

Ans. No, sir; I did not.

Ques. Were you, at the time these several orders were made, the owner of this Cleveland judgment, so called?

Ans. I was; I think Mr. W. P. Lynde was the attorney who represented that judgment.

Ques. Do you now own that judgment.

(Objected to as irrevelant. Objection overruled, and exception.)

Ans. I do not; I suppose it is owned by the Milwaukee and St. Paul Railway Company; I sold it to them.

Ques. When did you sell this judgment, as near as you can state?

Ans. It must have been in June, 1863; my impression is about the 25th.

Ques. Did you sell it absolutely to this company, or is there any understanding or agreement by which you are to be interested in any contingency in the judgment?

Ans. I did sell it absolutely, and have received my pay.

Direct examination resumed:

341 Ques. Did you get the full face of the balance due on the judgment?

Ans. Yes, I did, with back interest in securities.

Cross-examined by Mr. Carpenter:

Ques. In what was the payment for this judgment made and how made?

Ans. In one income bond of the Milwaukee and St. Paul Railway Company for $89,137 75, which is unsecured, except by a pledge of the income of the road after paying the interest on mortgage bonds; the bond was due in July, 1864.

S. CHAMBERLAIN.

Examination of John H. Van Dyke, a witness produced, sworn and examined on behalf of the receiver.

John H. Van Dyke being first duly sworn, testified as follows:

Ques. Are you cognizant of the fact that orders directing payments by the receiver upon the Cleveland judgment were made?

Ans. Yes, I knew of four orders being made.

Ques. Do you know whether or not an attorney for the Milwaukee and Minnesota Railroad Company assented to the orders being made, or of the payments being made by the receiver? And if so, please give all particulars.

Ans. I know that Mr. M. H. Carpenter, who now appears of record for the Milwaukee and Minnesota Railroad Company, had knowledge of the granting of each of said orders at or about the time they were made; that the orders of June 29th and July 18th, 1861, were made during the reference before Winfield Smith, Increase A. Lapham, and Jerome R. Brigham, before whom Mr. Carpenter and myself appeared for parties interested in the matters then being inquired into by said reference. That the order of $20,000 which was the order of July 18th, 1861, was presented then to the commissioners to be credited on the Cleveland judgment; that Mr. Carpenter was present at the time. My recollection is, that the order for $10,000 was in like manner presented them at or about the time it was made for the purpose of being credited as a payment upon that judgment;

342 of that, however, I cannot speak positively, and of Mr. Carpenter's presence. These four orders, I believe I made the application for to the court personally on petition. I did for three of them, and I know that Mr. Carpenter knew that such appli-

cations were being made, and at the time expressed a wish to have the whole Cleveland judgment paid up and out of the way, so that judgments which he represented might come in the order of payment. I rested under the impression that Mr. Carpenter wished this judgment paid, until at or about the time of the application for the last order. I believe it was the last order, at any rate it was the order last made preceding the time of motions being made to vacate these orders. The way I made these applications was this: I procured from the clerk of the court a copy of the receiver's monthly account; monthly, in order to be informed when there was a surplus in the hands of the receiver applicable to the judgment. This judgment was at that time equitably owned by Selah Chamberlain, in whose name the applications were made, but the proceeds obtained from court thereon were to go either in whole or in part to Newcomb Cleveland, until the balance due him for its purchase should be paid.

When I was about making the application for the order last preceding the motions spoken of, there being some considerable delay in getting the order, Newcomb Cleveland called on me once, or oftener, and, I think, as many times as twice, urging haste on my part in getting that order, and giving as a reason that Mr. Carpenter was about to take steps to prevent the future payment of moneys out of court; but was willing that this order should be paid, and would delay his proceedings a reasonable time for that purpose. I saw Mr. Carpenter upon the subject, and without being informed by him what steps he purposed to take, or seeking myself to know what they were, I ascertained in my interview with him that I could have a reasonable time in which to get this order before the contemplated steps were taken. I did get the order before any motions were filed; how long before I don't know. I can only further state that I always supposed from my conversation with Mr. Carpenter that he was not only willing but anxious that this Cleveland judgment should
343 be paid up from the proceeds in court, and gotten out of the way as early as might be; and I recollect Mr. Carpenter using the expression in regard to this judgment, that this judgment was good and would stand. In connection with the fact of his having other claims, the collection of which would be facilitated by this judgment being got out of the way. I don't know that I can answer any further.

Cross-examined by Mr. Carpenter on behalf of the Milwaukee and Minnesota Railroad Company.

Ques. Did you ever serve on, or give to Matt. H. Carpenter, as solicitor for the Milwaukee and Minnesota Railroad Company, any notice of the time or place when any application would be made or heard to, or by the court or judge for the payment of any of these sums on the Cleveland judgment?

Ans. No, sir.

Ques. Did you ever ask said Carpenter to consent or stipulate as such solicitor that any of those payments might be made, or did he ever so consent or stipulate?

Ans. No, sir; my recollection is this: That when I first presented an application for these payments, I went personally to see the attorneys representing the different interests, to get their consent thereto; and there was a universal assent that the said surplus funds then in court should be applied to that judgment. I will swear that no special notice was given of the presentation of the petitioners praying for such payment; and will further add that I did not deem the same necessary under the circumstances.

Ques. Did Mr. Ogden, solicitor of the complainants in this cause, consent to such payments?

Ans. Not otherwise or different than is stated in answer to the last question.

Ques. Did you apply to him, and inform him of your intended application for payment of said sums? and if yea, what did he say about it?

Ans. My impression is that I did acquaint Mr. Ogden with what I was doing; it is impossible for me to state what he did say about it; my present impression is, that he was not interested to oppose it.

Ques. Do you now recollect that at the time you applied to
344 him (Ogden) he gave you to understand that he would not oppose these payments?

Ans. I can't say definitely that he agreed to anything, or that any of you did, in regard to opposing or not opposing such application; there was a concession that that judgment had to be paid anyhow—a concession or impression you may say.

Ques. What judgment, or claim, or interest, did you understand Carpenter represented between the Cleveland judgment and the Milwaukee and Minnesota Railroad Company interests that would be aided by getting the Cleveland judgment out of the way?

Ans. I understood that Mr. Carpenter represented the Graham and Scott judgment—was counsel in another claim or judgment, I think the Howard judgment, and was also counsel either for Fleming or the Milwaukee and Minnesota Railroad Company, and that all would be benefited by it, and I think I can give you about the language that transpired between us at the time and the occasion.

Ques. Do so.

Ans. I think it was at the time of the payment of the twenty thousand dollar order, when we were both before the referers, and I made proof of that payment, these to be credited on the judgment. Carpenter laughingly remarked that some of his claims would come in after that judgment was out of the way.

My reply was, that there was a pretty big judgment yet unprovided for—meaning the Chamberlain judgment proper.

Ques. Can you swear positively that Carpenter ever knew of the time and place at which any of these applications were made, or heard by the judge or the court?

Ans. My impression is he did. Mr. Cleveland was here in almost every instance; twice, to my positive knowledge, he made his headquarters at Carpenter's office. I knew that he was anxious that Cleveland should get his money; and my very positive impression is,

that we spoke together more than once upon the subject of these very applications, at or about the time they were made.

Ques. Can you state positively that you ever communicated to Carpenter the fact that you intended, at any particular time or
345 place, to move or apply for any one of these payments?

Ans. I did let him know of the application preceding the time of the filing of the notices to vacate these orders, as I have stated in my direct examination.

Ques. Did you inform him of the time at which you would make the application?

Ans. My impression is that the information I gave him at that time was that the application was then about to be made or was then pending, and the order had not been made.

Ques. Did you understand, at the time of your conversation with Carpenter, that you were giving him notice as solicitor for the Milwaukee and Minnesota Railroad Company of such application?

Ans. If you mean formal and technical notice, I answer no.

Ques. Did you state to him that you had come to him to give him notice of these applications, or anything to that effect?

Ans. I mean just what I have stated in my direct examination; Cleveland came to me and told me that Carpenter was getting ready to resist any further payment on that judgment; and wanted that I should press this order and get the payment before he did so; I found there would be delay about getting the order for want of receiver's report, or something else.

I went to Carpenter in his office to ascertain whether any immediate steps were about to be taken to stop further payment on that judgment, and left with the impression, after my interview with Mr. Carpenter, that none would be taken immediately. I went on, and got my order before any were taken. I supposed at the time that Carpenter knew what Cleveland had told me, and I went to Carpenter's office under that impression. It is possible, I can see now, that what Cleveland said might have had the effect to deceive both Carpenter and myself; but I supposed at that time that Carpenter knew all about it as well as I did. The effect of it was that you did have notice of my then application; and I think I did tell you why I made the inquiry; but still Mr. Carpenter may not have understood what I meant.

Re-direct:

Question by Mr. Brown:

Were you at that time the attorneys for the Milwaukee and
346 Minnesota Railroad Company, employed by the board of directors?

Ans. I think N. J. Emmons was, but won't speak positively of dates. He was up to the date of the new election which superseded the Sage board; he was my partner.

Cross-examination:

Ques. Did Mr. Emmons in fact act in court in the cause at any

time, as solicitor or counsel, for the Milwaukee and Minnesota Railroad Company?

Ans. I am not familiar with what he did for the company, and cannot answer the question.

JOHN H. VAN DYKE.

The examination of Hans Crocker, on the part of the Milwaukee and Minnesota Railroad Company, taken April 13th, 1865.

Hans Crocker called and re-examined as a witness on the part of Alexander Fleming and the Milwaukee and Minnesota Railroad Company having been previously sworn, testified as follows:

Ques. During the period of your receivership have the earning of the eastern division of the La Crosse road been kept separate from or mingled with the earning of the western division?

Ans. I have once or twice answered this question, and fully explained how the accounts were kept, and refer you to my previous answers. The accounts were kept together until the roads were separated, and after that they were kept separate.

Ques. Was the moneys and earnings of the eastern division paid to you after possession taken by the St. Paul company, and as it was earned, and at what times and in what amounts?

Ans. The earnings were paid in to Mr. Cary, the cashier of the St. Paul road, and are held by him; the St. Paul road paying me, from time to time, as I need money. I also refer to my previous answer explaining how this thing was done.

Ques. What amount of such earnings are still held by the St. Paul company and not paid over to you?

Ans. I have not got just the figures here, but there was about $108,000 on the first day of March last.

347 Ques. Can you, and will you, and when, furnish a statement of the mileage of the rolling stock of the La Crosse road, (except 40 box cars,) from the 1st of September, 1864, to the 1st of March, 1865, as well over the Watertown road as on the western division?

Ans. I think I can do it, and, if I can, I will do it. The paper now presented and marked "Continuation of Exhibits E," is a continuation of the accounts contained in Exhibits E, heretofore presented, from Feb. 30, 1864, to July, 28, 1865.

Adjourned to 28th April, 10 a. m.

Hans Crocker's examination continued:

Ques. Is the amount of $38,240 35, shown by your accounts as being on hand Feb. 28, 1865, actually on hand, and in your hands?

Ans. That is the balance represented on hand on that day in cash, or in items equivalent to cash?

Ques. How much of this sum was actually in your hands in cash on that day?

Ans. I can't state precisely the amount, but I think it was not far from $10,000 at that time.

Ques. What were the items which you say were equal to cash which made up the balance?

Ans. One item of $2,000, which I have paid Cary and Pratt in cases where I had employed them. One item is for some $800, paid to Erasmus Tayler, of Portage, for legal services. One item was $800, paid to Judge Levi Hubbell for attorney's fees. These payments were paid to attorneys employed by me as receiver. The balance is money that I had used myself as a part of my compensation as receiver.

Ques. When did you take or use this balance?

Ans. From time to time since I have been receiver.

Ques. Has there been any order of court or of a judge of the court fixing your salary, or authorizing you to take or use for your own benefit any portion of this fund?

Ans. Not to my knowledge.

Ques. Have you taken and used from year to year about what you supposed your compensation should be?

348 Ans. I have taken and used from time to time what I needed, without reference to what the court would allow.

Ques. Can you state how much you have taken in each year, from 1860 to the present year?

Ans. No; I cannot tell here without my memorandum and books. In my office I can show just what I received in each year.

Ques. Will you present your memorandum and books, showing how much you have taken from this fund, and used for your own benefit in each of the years above mentioned?

Ans. I will present a statement as soon as it can be made out, showing the sums taken in each year.

Ques. What, in your opinion, would be a reasonable compensation to you for your services as receiver of the Milwaukee and La Crosse railroad, from Milwaukee to La Crosse, from the time of your appointment to June 12, 1863, when you passed the road over to the St. Paul company?

Ans. $10,000 a year.

Ques. Did the receivership of the western division engross as much of your attention as that of the eastern division?

Ans. It was all one road and one interest, and I don't know but one occupied as much time as the other. It was all one thing.

Ques. How many hours each day on an average were you actually employed about your duties as receiver from your appointment to June 12, 1863?

Ques. I can't tell; sometimes all day, and sometimes three hours a day. The winters I have spent in Madison on railroad matters.

Ques. About what interests were you employed at Madison during the winters?

Ans. Aiding in protecting the general railroad interests of the State, such as increased taxation, pro rata tariff, &c.

Ques. Do you mean that you were employed there as lobby man?

Ans. I went there as receiver of the La Crosse road, to protect the interest of that road.

349 Ques. In what way were the interests of that road involved at Madison?

Ans. Each of those years attempts were made to increase the tax on railroads, and to pass pro rata tariffs, which would have been very injurious to the railroads of the State.

Ques. Have you not in each of those years exerted your efforts and influence at Madison to defeat legislation which was sought by the Milwaukee and Minnesota company?

Ans. No.

Ques. Have you not used your efforts and influence to procure legislation that was detrimental to the said company?

Ans. I have not.

Ques. Were there not two bills pending in the legislature at the session of 1863, to incorporate the purchasers of the western division, and was not your name inserted as one of the corporators, and did you not aid and advise their passage, or the passage of one of them?

Ans. There were such bills pending during that session. I was named as a corporator without my knowledge or consent. I first saw the bill in the hands of Senator Hopkins, of Madison. I immediately went to Mr. Finch, the attorney of the western division then at Madison, and asked him to strike my name out of the bill, as I had no interest in the road either as a bondholder, stockholder, or otherwise. He replied that he did not feel at liberty to do so, as the bill had been prepared in New York, and had been sent out, and he desired to pass it as they had sent it to him. I told him, at the same time, that it was utterly impossible to pass the bill. About that time, I saw Mr. Sharpstein, of the assembly, and Sat. Clark, of the senate, and requested them, in case the bill should ever come before either house, to have my name struck out.

Ques. During your absence at Madison was any one employed to act in your stead at Milwaukee, or were any additional persons employed during your absence?

Ans. No. Goodrich attended to the business while I was gone. He was in regular employ the same as when I was at home.

Ques. How much, in your opinion, would be a reasonable
350 compensation per year for your services as receiver from June 13, 1863, to this time?

Ans. $5,000 a year.

Ques. Since June 13, 1863, what has been the nature and character of your duties, and what, that is, how much have you done as such receiver?

Ans. Since that time the labor and responsibilities have been light in regard to what they were before.

Ques. What, and how much have you had to do as receiver since June 13, 1863?

(To this question Mr. Brown objects, because the same question has been put, and repeatedly answered, and the limited time allowed under the order of the court to close this whole investigation makes the needless repetition of the same question vexatious and onerous. Objection overruled, and Mr. Brown excepts.)

Ans. Except for the time the whole road was in the possession of

the St. Paul company, (from June 13, 1863, to May 1, 1864,) my duties were the same as when I had charge of the entire road, except the receipts and responsibilities have been less.

Ques. Do you know whether the St. Paul company has kept the funds received by it from the eastern division separate from other moneys and on hand?

Ans. I cannot answer—don't know anything about it. I believe they have not.

Cross-examined by Mr. Brown:

Mr. Brown offers a certified copy of an order of court of June 12, 1863, which is marked Exhibits R R R. Also certified copy of judgment rendered in case of Newcomb Cleveland *vs.* The La Crosse and Milwaukee Railroad Company, which is marked Ehibits S S S. Also copy of decree in case of Newcomb Cleveland *vs.* The La Crosse and Milwaukee Railroad Company and others, which is marked Exhibit T T T. Also certified copy of order of the court in the case of Greene C. Bronson and James T. Soutter, trustees, *vs.* The La Crosse and Milwaukee Railroad Company and others, dated June 12, 1863, which is marked Exhibit U U U. Mr. Brown also
351 presents and files petition of receiver for compensation marked V V V.

Hans Crocker cross-examined by Mr. Brown:

Ques. Your attention was called yesterday to the balance in your hands on the 28th of Feb., 1865, and to certain portions of the balance which had been used by you. Was the amount taken by you in any one year equal to what you supposed, under the most unfavorable circumstances, the court would allow you for that year?

Ans. It was not.

Ques. Did you consider yourself entitled to use within safe bounds a part of what you supposed would be your compensation, holding yourself responsible to refund in case so ordered by court?

(Objected to because his right to take the money is settled by law, and not by Mr. Crocker's opinion. Objection overruled and exceptions noted.)

Ans. I did.

Ques. In fixing the amount of compensation for services at $10,000 per annum, did you take into consideration any responsibility which might accrue to you beyond that of honestly discharging your duties, or any annoyance growing out of suits against you, or litigation with you in the character as receiver?

Ans. I did not.

Ques. Did you pay the amounts directed by the order of the judge of the district court to be paid on the Cleveland judgment, in good faith, and without the slightest impression that you had the power to refuse, or that it was your duty to pass upon and overrule the judge of the district court?

Ans. I paid them in good faith, and supposed I was bound to obey the orders of the court.

Ques. Are you aware that the Minnesota Railroad Company contend here that you must refund that money, and are not protected by those orders?

Ans. I have so understood such to be their position.

Ques. With liabilities growing out of such a claim, would $10,000 a year be any suitable compensation for the mere risk which a receiver runs?

352 Ans. Most certainly it would not.

Ques. How many times have you been sued as such receiver in the State courts for your acts as such receiver?

Ans. Ten or twelve times in courts of record, and frequently as garnishee before some justice of the peace.

Ques. Have you been arrested for larceny for taking possession, as receiver, for what is known as the Horrican depot, belonging to the La Crosse road?

Ans. Mr. Goodrich and myself were arrested on complaint of Jesper Vleit for stealing the Horicon depot, were held to bail, stood trial, and were honorably acquitted. Vliet claims to own the depot as agent of the Horicon road. I took and kept possession of it as receiver, and that it belonged to the La Crosse road.

Ques. Were you at any time enjoined in the State court from running the cars through Portage?

Ans. I was.

Ques. Were you directed by counsel, Mr. Cary, to continue running your trains, notwithstanding the injunction, and did you do so?

Ans. I was, and did.

Ques. How many suits are now pending against you as receiver, and for what amounts?

Ans. There are three; two for killing men, and one for breaking a man's leg, which has since been amputated. The damages claimed in the three cases amount to $20,000. Exhibit W W W contains a list of these cases, where pending, and the amount claimed in each.

Ques. State whether there are any, and what, particular circumstances attending the litigation of this case, that rendered the position of receiver extraordinary disagreeable?

Ans. It has been from the first a bitter contest between different parties claiming to own the road, or different parts of the road, each party appearing to be dissatisfied with the management of the road. These different claims, and the litigation which has lasted ever since I have been receiver, have involved me more or less in their personal quarrels, not intending to take any part in them myself.

353 From the day I was appointed receiver up to this time I have been anxious and desirous to have these matters compromised and settled, and have done everything in my power to do so.

Ques. Did the order of the court, putting the St. Paul road into possession, to which reference has been made, increase or diminish the annoyance of your position?

Ans. It increased them.

Ques. If you were certain that all the disputed items in your account would be allowed as claimed by you, would you, with your

present knowledge of the difficulties and labor of the receiver, accept the same office for $10,000 a year?

(Objected to as speculative, immaterial, and irrelevant. Objection overruled and exception noted.)

Ans. I most certainly would not.

Ques. What has been the gross amount of receipts on that road by you as receiver during the whole time you have been receiver up to the 28th February, 1865?

Ans. $4,287,876 52.

Ques. What has been expenditures during the same time?

Ans. The expenditures have been the same amount, less the amount mentioned in my direct examination as being on hand.

Ques. I wish to refer you to your explanation in your direct examination as to the amount on hand, and the items treated by you as cash. Were the payments mentioned by you as having been made to attorneys made in suits, affecting you as receiver, and the interests of the road, and were the parties fairly entitled to the amounts so paid them?

Ans. Yes, they were.

Ques. Will you give the reason why these payments were not made a part of your account at the time, so as to diminish the apparent balance in your hands?

Ans. In the case of Cary and Pratt it was money paid on account for services rendered. I wished to get their whole account before I settled with them, and then wished, as I told Mr. Cary, to have the account allowed or passed upon by the court. It was understood that they were to repay if the amount was not allowed.

354 Ques. Were you consulted in advance, or did you in any way have anything to do with the application of the St. Paul company to be let into the possession of the eastern division?

Ans. I knew of the application but was not consulted, and had nothing to do with it, and knew nothing about the order until it was made.

Ques. Had you any other motive in complying with the order, except the belief that you were bound so to do?

Ans. None whatever.

Ques. Did Mr. Russel Sage represent himself to you as being the agent for the complainants in the second mortgage suit and for a majority of the bondholders?

(Objected to as irrelevant and immaterial by Mr. Jenkins. Objection overruled and exception noted.)

Ans. He informed me that he was the attorney of the complainant, and that he represented $800,000 of the $1,000,000 of the bonds.

Ques. Did he consent to your surrender of the road to the St. Paul company under that order, and to your subsequent arrangement with that company, mentioned in your testimony?

(Objected to by Mr. Jenkins as irrelevant and immaterial. Objection overruled and Mr. Jenkins excepts.)

Ans. He was present when I delivered possession of the road to the St. Paul company. In relation to the arrangement referred to, he

has frequently said to me that it was the best arrangement that could be made for the eastern division.

Adjourned to Monday, May 1, at 2 p. m.

H. CROCKER.

Matt. H. Carpenter recalled on behalf of the Milwaukee & Minnesota Railroad Company and A. Fleming, and re-examined, May 10, 1865, testified as follows:

I prepared and filed the exceptions on the part of the Milwaukee & Minnesota Railroad Company, and Graham and Scott, to the marshal's report of sale, which sale was afterwards pretended to be confirmed by the district court in the land grant case, in May, 1863. I did not know at that time nor until long after the said confirmation of the said sale, that the marshal had in fact pretended at that sale to sell any of the rolling stock on the La Crosse railroad except
355 the 40 box cars, and the proportion of stock purchased by the receiver, as mentioned in the land grant decree. I had never read the marshal's advertisement or report of sale, to see what the marshal advertised for sale, or pretended to sell. I intended by the exceptions to object to the sale as indefinite and uncertain, because it was not ascertained in that cause what proportion of the stock purchased by the receiver was ordered to be sold by the decree, or what particular purchases of the old company were to be thus sold.

(Mr. Cary objects to the testimony so far as the witness attempts to secrete what his intention or object was in filing said objections, and objects to the whole testimony as irrelevant. Objection sustained, and Mr. Carpenter excepts.)

Cross-examined by Mr. Cary:

Ques. Did you act as solicitor and counsel for the Minnesota company in that foreclosure, and that as such counsel prepare the motion, papers, and serve upon the complainant's counsel at one or more times during the pending of that advertisement to postpone the sale?

Ans. I was the only solicitor and counsel for said company, so far as I know, (I think Judge Hubbell advised with me, and *and* may have signed some papers as counsel.) I know the marshal had advertised a sale under the land grant decree, and I think I did serve and file papers to prevent or delay the sale. I had full knowledge of the time at which the sale was to take place, but I had never read the advertisement to ascertain what property was advertised for sale, acting always upon the belief that the advertisement and sale followed the directions of the decree.

(Mr. Cary objects to the last claim of the answer as not responsive to the question. Objection overruled, and Mr. Cary excepts.)

Ques. Did you file in that case a bill of receiver and reply for an injunction immediately before the sale took place?

Ans. I did, and argued the motion before the two judges of the circuit court, and was defeated. At the time of drawing these papers I do not recollect whether I had or not any copy of the

advertisements, but presume that I directed and that my
356 clerk or client did procure and attach a copy of the advertisements to the bill of receiver; the record will show. I don't remember whether I was present at the sale or not; I have no recollection of it. I don't recollect that I had any copy of the report of sale before me when I drew the exceptions. I think I did not argue the exceptions before the district court. My recollection is that I did not. When the question came up on the confirmation of the sale, in the district court, I was present, but my recollection is that I made no oral argument myself, and I think I did not hear what arguments were made by others.

MATT. H. CARPENTER.

Edwin H. Goodrich, re-examined by Mr. Carpenter, testified as follows:

Ques. Are you still superintendent of the Milwaukee and St. Paul Railway Company?

Ans. I am.

Ques. Since June 13, 1863, have the funds received by that company arising from the operation of the eastern division been kept separate from the other moneys of the company, or have the same been kept with the other moneys of the said company, and used from time to time by that company?

Ans. They have not been kept separate, but have been kept with the other moneys of the company, and used from time to time as they were received.

Ques. In the items of the accounts heretofore filed, how was the item $202,311 16 made up?

Ans. I have already explained how the first part of the account was made out, and the second was made out upon the same basis.

Ques. In paper marked "Continuation of Exhibit E," filed April 13, 1865, is an item, "Use of rolling stock, $36,118 86." Does this item contain any charge for use of rolling stock subsequent to Sept. 1st, 1864?

Ans. It does not, as I understand it.

Ques. Then I understand that Exhibit E, and continuation of Exhibit E, show the amount charged the eastern division for the use of rolling stock from June 13, 1863, to Sept. 1, 1864. Is this correct?

357 Ans. That is as I understand it.

Ques. Since Sept. 1, 1864, where has the rolling stock been used which was on the old road when the receiver was appointed?

Ans. It has been used on the road between Milwaukee and La Crosse, by the way of Watertown, Columbus, and Portage City, being the western division and the Watertown road.

Ques. Since Sept. 1, 1864, what proportion of the rolling stock purchased by the receiver has been used on the eastern division, and where has the balance been used?

Ans. I cannot answer the question definitely. I should estimate

that two-thirds of that purchased by the receiver, or its equivalent, has been used on the eastern division, and the balance has been used on the western division and the Watertown railroad, or laying still.

Ques. Has any of the original rolling stock been used on the Horicon road since June, 1863?

Ans. Yes.

Ques. To what amount, or to what extent?

Ans. I cannot tell. Since June 13, 1863, the Milwaukee and St. Paul Railway Company have operated the Horicon road and the western division, and the Watertown road, and have used the original rolling stock wherever they required it.

Ques. Can you furnish such statement of the mileage on the western division from July 1, 1864, to September 1, 1864, as you furnished from June 13, 1863, to July 1, 1864, and which is marked K K?

Ans. I will undertake to do so if you will furnish me a copy of Exhibit K K, already rendered.

Ques. Should the charges for the use of rolling stock for July and August, 1864, be at the same rates as testified to by you, from May, 1863, to June 1, 1864?

Ans. I think the charges made for the use of rolling stock during those months were at the same rates.

Ques. Can you furnish a statement of the mileage of rolling stock on the western division from Sept. 1, 1864, to March 1, 1865?

Ans. I can furnish an approximate statement, but not a correct one, and will do so.

358 Ques. Can and will you do the same thing for mileage of rolling stock on the Watertown division?

Ans. I will undertake to do so.

Ques. From Sept. 1, 1864, to March 1, 1865, what would be a fair compensation for use of rolling stock per mile on the western division and Watertown division? Distinguish in your answer between locomotives and the different kinds of cars.

Ans. Same rates as charged for same service from May 7, 1863, to June 1, 1864, viz:

Locomotives, 25 cents.

Passenger cars, 5 cents.

Baggage and mail cars, 3 cents.

Freight cars, 2 cents.

Ques. In the account, Exhibit E and its continuation, was the rolling stock charged at higher rates than in your last answer mentioned?

Ans. I think there has been no change.

Ques. In paper marked "Exhibit C," the mileage of engine upon the western division is stated 739,747 miles. Now for that term would the reasonable rent for other rolling stock on that division be equal to the use of locomotives, or greater or less?

Ans. My opinion is, that the mileage of the cars hauled in each train is equal in value to the mileage of the engines that haul them.

Ques. If the western division be charged for the use of rolling stock from June 11, 1860, when the receiver was appointed, to January 13, 1862, upon the *the* theory that all the original rolling stock belonged to the eastern division, except the 40 box cars mentioned in the land grant decree, would there be any net earnings belong to the western division during that time?

(Objected to, because the question is immaterial and because, up till the time of the sale of the western division the road and rolling stock was an entirety. Objection was overruled and exception by Mr. Brown.)

Ans. My opinion is, that upon such a basis of accounting,
359 that the western division would not have shown any net earnings; but I have not made any examination of the business of that division during that period, and make the statement from my recollection of what it was.

Ques. About how many cords of wood per year are burned upon the eastern division?

Ans. I am not able to state. (Question waived.)

Ques. Will you state whether the item in Exhibit E, "Fuel, $37,989 74," and item in paper marked "Continuation of Exhibit E," "Fuel, $18,003," show the fuel purchased or the fuel consumed on the eastern division?

Ans. They show the value of fuel consumed.

Ques. In the inventory of property, on the eastern division, when taken possession of by the St. Paul company, there is shown 13,903 cords of woods. What was that worth per cord at that time?

Ans. From recollection, I should state it worth $1 75 per cord.

Ques. Will you furnish the auditor with statement showing the total amount of repairs of all the rolling stock from June 1, 1864, to March 1, 1865, deducting the amount which has already been charged to the eastern division in the accounts returned to the auditor?

Ans. Yes, I will undertake to, if you will furnish me copies of the statements already made.

Cross-examined by Mr. Brown:

Ques. If the ownership of the rolling stock should be held to lie in the eastern division owners, and they are to be credited with the value of the use of the rolling stock, should they not also be charged with the cost of keeping it in running order?

Ans. They should.

Ques. What proportion will the cost of repairs of rolling stock bear to the value of the use of rolling stock as charged?

Ans. About the same. An examination of that matter was made about a year since, and I think the result was about 8 per cent. in favor of the use. In this I may be mistaken.

Edwin H. Goodrich, examination continued by Mr. Carpenter May 6, 1865, testified as follows:

360 The witness here presents a statement, marked Exhibit Y Y Y, and states that the same is a statement showing the

mileage of rolling stock on the western division, July 1st, 1864, to September 1st, 1864.

The paper now presented, and marked Exhibit Z Z Z, is a statement showing mileage of rolling stock on the Milwaukee and St. Paul railway from Sept. 1, 1864, to March 1st, 1865. The paper now presented and marked Exhibit No. 1, is a statement showing total cost of repairs of rolling stock, eastern and western divisions, June 30, 1864, to September 1, 1864, Milwaukee and St. Paul railway, and eastern division from September 1, 1864, to March 1, 1865. The paper now presented and marked Exhibit No. 2, is a statement of cost of repairs of rolling stock, Milwaukee and St. Paul railway, from Sept. 1, 1864, to March 1, 1865. The paper now presented and marked Exhibit No. 3, is a statement of cost of repairs of rolling stock charged western division Milwaukee and St. Paul railway, June 30, 1864, to Sept. 1, 1864. (The parties here filed the stipulations marked respectively Exhibits No. 4, 5 & 6.)

Ques. (By Mr. Carpenter.) In the charge for fuel in operating the eastern division, at what price per cord has the wood *has the wood* been charged?

Ans. I can't tell you. It has been charged at its estimated cost. I can furnish a statement of the cost at which the wood has been charged on the eastern division, and will do so.

Ques. About the time the St. Paul Company took possession of the eastern division, was there an inventory made of the rolling stock on the whole road, except the 40 box cars mentioned in the land grant decree, and of the personal property on the eastern division?

Ans. There was a general inventory made. I cannot state as to the 40 box cars.

Exhibit No. 7 is admitted by the parties to be a copy of the inventory mentioned in the above answer, and is presented in evidence.

The erasures in red ink are to be disregarded.

Ques. In your former testimony, you referred to the extension of the repair shops at Milwaukee; would this extension have
361 been necessary, regarding the eastern division as a separate road?

Ans. It would not.

Ques. In your former testimony you gave as the total repairs of all the rolling stock from June 13, 1863, to June 1, 1864, on the main line as $139,638 03. Did this include a sum of $28,423 99, charged to the eastern division in "Exhibit E" before the auditor?

Answer. I cannot state from recollection. I will ascertain and state.

Ques. Does the account for the repairs of rolling stock, eastern and western divisions, June 30, 1864, to Sept. 1, 1864, and Milwaukee & St. Paul Railway Company, and eastern division Sept. 1, 1864, to March 1, 1865, giving as the total costs of such repairs a sum o $208,820 63, include the repairs to rolling stock of the Horicon & Watertown roads, and any other rolling stock that you have had on the road?

Ans. I understand it does.

Ques. Can you furnish the statement of the amount of each kind of rolling stock on the Milwaukee & La Crosse railroad, June 11th, 1860; also a similar account of the amount on hand June 11th, 1863; also a similar statement of the amount acquired from the Milwaukee and Western Railway Company; also a similar statement of the amount acquired by the purchase of the Milwaukee and Horicon railroad; also a similar statement of the amount built or bought by the Milwaukee and St. Paul Railway Company since June 13th, 1863?

Ans. I can; the paper marked Exhibit No. 8, is a statement of the amount of rolling stock on hand June 11th, 1863; the paper marked Exhibit No. 9, is a similar statement of the amount of rolling stock on hand June 11th, 1863; the paper now presented and marked Exhibit No. 10, is a note explanatory of the two statements marked Exhibits Nos. 8 and 9; the paper marked Exhibit No. 11, is a statement of the rolling stock acquired with the Milwaukee and Watertown, and the Milwaukee and Horicon railroads, and the rolling stock bought and built by the Milwaukee and St. Paul Company since June 13th, 1863.

Ques. Was there any other rolling stock in use on the Milwau-
362 kee and St. Paul railway, and on the eastern division of the Milwaukee and La Crosse railroad, from June 13th, 1863, up to March 1st, 1863?

Ans. There were 40 cars belonging to the Minnesota Central Railroad Company in use on said roads from about the 1st of July, 1864, to March 1st, 1865.

Ques. In Exhibits Y Y Y and Z Z Z you have given a statement of the mileage of the rolling stock of the Milwaukee and St. Paul Railway Co. from September 1st, 1864, to March 1st, 1865, and also from July 1st, 1864, to September 1st, 1864. Do these statements include the mileage of all the rolling stock which you have in your answers heretofore described as belonging to the old La Crosse and Milwaukee railroad, the Horicon railroad, and the Watertown railroad?

Ans. Exhibit Y Y Y shows the mileage on the western division made by parts of all the stock referred to; in Exhibits Nos. 8, 9, 10, and 11, and the 40 box cars of the Minnesota Central Railway Company from July 1st, 1864, to September 1st, 1864, and Exhibit Z Z Z shows the mileage on the Milwaukee and St. Paul railway; by all the stock referred to in Exhibits Nos. 8, 9, 10 and 11, and the 40 cars belonging to the Minnesota Central Railway Company from Sept. 1st, 1864, to March 1st, 1865, as I understand them.

Cross-examined by Mr. Brown on behalf of the receiver:

Ques. Were the buildings and improvements erected on the eastern division while Mr. Crocker was receiver, and referred to his accounts, erected under your supervision?

Ans. They were.

Ques. Were they necessary and judicious improvements at the time they were erected?

Ans. They were; as my recollection is, that they were projected and commenced previous to the time that the Milwaukee and St. Paul Railway Company determined to construct a railway between Portage City and Columbus, and Brookfield and Milwaukee for the purpose of making the main line of railroad from Milwaukee and La Crosse by way of Watertown and Columbus.

363 Ques. Was the eastern division then operated as a part of the main line between Milwaukee and La Crosse?

Ans. At the time the buildings were projected and commenced it was, and it was so for several months afterwards, and until the 1st of September, 1864.

Cross-examined by Mr. Cary:

Ques. Can you furnish a statement which will show the entire gross earnings of the eastern division of the La Crosse road, excluding therefrom all business brought on to it from the western division and the Horicon road from July, 1863, to March 1st, 1865?

(Objected to as irrelevant and impertinent. Objection overruled, and exception taken.)

Ans. I don't know that I can, but I will undertake to furnish it from the books of the company.

MAY 10, 1865.

Edwin H. Goodrich continued:

In answer to the question as to the price at which wood used on the eastern division, the witness says: That from the first of June, 1863, to the first day of June, 1864, the price was $2 50 per cord; from the 1st of June, 1864, to the 1st of January, 1865, the price was $3; and from the 1st of January, 1865, to the 1st of March, 1865, $3 50.

The witness now states that he has examined and finds that the item $208,820 63, repairs of rolling stock before inquired about, does include the repairs of all the rolling stock belonging to the Milwaukee and St. Paul Railway Company, and all they claim to own, and no other, being all the rolling stock on the road from Milwaukee to La Crosse, and all on the Watertown and Horicon divisions.

Ques. Has any of the rolling stock which has been bought or built by the Milwaukee and St. Paul Railway Company been sold or disposed of? and if so, when, and what portions thereof?

Ans. 50 box cars built by the Milwaukee and St. Paul Railway Company were sold in December, 1864, near the last of the month; also two passenger cars built by said company were sold in the fall of 1864, I think in November, and also one of the passenger

364 cars purchased with the Horicon division was sold in September or October, 1863. Exhibit No. 22 shows what amount of the sum stated in Exhibit No. 6, filed May 6th, 1865, was expended upon locomotives, passenger cars, and freight cars respectively.

Ques. Does the 450 freight cars, given as a part of the amount of the original rolling stock, include the 40 box cars described by numbers in the land grant decree?

Ans. I understand that it does.

Ques. Does the statement of the amount of repairs of rolling stock, in Exhibit M M, include the amount of $28,423 99, charged the eastern division for repairs of locomotives and cars in Exhibit E?

Ans. It does.

EDWIN H. GOODRICH.

Dan'l J. Whittemer sworn and examined:

Ques. What is your occupation, and by whom are you employed?

Ans. I am an engineer, and am employed by the St. Paul Railway Company.

(A book is here shown to the witness.)

Ques. What book is this?

Ans. This is a cross section book from station 4,508 to station 5,028, plus 30 feet.

Ques. Where is station 4,508?

Ans. About a mile and a half east of Midland station.

Ques. How far is it from that station to station 5,028, plus 30 feet?

Ans. About nine miles and eight-tenths of a mile.

Ques. Is this book kept, and does it proceed in the usual form of a cross section book for the construction of a railroad between these two stations?

Ans. It does.

Ques. How far apart are the stations marked and represented by this book?

Ans. They are intended to be 100 feet.

Ques. By what engineer does this book purport to have been kept and used?

365 Ans. Abram Vleit, assistant engineer. The book is in handwriting of Andrew Sexton, who was an assistant engineer, and was employed in the office of the engineer of the La Crosse company, and also in the field during the construction of the eastern division.

Ques. Who purports by this book to have been contractors or sub-contractors on this section, and where did their work begin, and where did it end?

Ans. and Potter purport to be the contractors; their work commencing at station 4,508, and extending to station 5,028, plus 30 feet.

Ques. Turn to your maps, and state where station 5,028 plus 30 feet is, with reference to freight depot at Portage.

(Objected to as immaterial. Objection overruled, and Cary excepts.)

Seth C. Baldwin sworn:

Ques. What is your business?

Ans. Superintendent of the Chicago and Milwaukee railway.

Ques. How long have you been engaged in the railroading business?

Ans. As superintendent, about four years and a half; in railroading, about eighteen years.

Ques. From your general knowledge and information in regard to railroading, is it customary for railroad men and railroads, when one road is so situated as to act as a feeder to another, for the road receiving such benefit to allow an advantage by way of drawbacks or otherwise to the road so furnishing it business, for the excess of tonnage so furnished above, what it receives from the other road?

Ans. It has been so in my experience, to a greater or less extent; greater in the cases where the feeder has a connection with a competing line.

Ques. Are you acquainted with the line of the La Crosse and Milwaukee railroad, from Milwaukee to La Crosse?

Ans. I am so generally.

Ques. Supposing the interest and ownership at that road divided at Portage City, so that the eastern end is owned by one in-
366 terest, and the western by another, and that the western division furnished a large excess of tonnage to the eastern over and above what it receives from it, ought there, on the principle above stated by you, to be a drawback allowed the western for such excess furnished? and if so, what amount?

Ans. It would be customary to do so. If on grain freight, I should say from one cent a bushel to one cent per hundred pounds; that is, from one cent on 60 lbs. to one cent on 100 pounds. I should say from ten to twenty per cent. on the amount so received over and above a pro rata.

Ques. Are you acquainted with what is known as the Horicon road, and its connection with the eastern division of the La Crosse road?

Ans. Yes, sir, generally.

Ques. On the hypothesis that the Horicon road furnishes all the cars necessary to transact the business, and deliver their loaded cars at the junction with the La Crosse road, what percentage of the pay for its earnings should the eastern division have for hauling it to Milwaukee and returning the cars?

Ans. Under the circumstances of a competing route by way of the Northwestern road, from Burnett's station to Chicago, the eastern division could afford to do the business for 30 per cent. for any ordinary through rate.

Examined by Mr. J. S. Brown:

Ques. Are you acquainted with the eastern division of the La Crosse road, extending 95 miles west from Milwaukee, and have you a general acquaintance with its business?

Ans. I am generally acquainted with it, and generally acquainted with its passenger, and not with its freight business.

Ques. How many locomotives and passenger cars would be necessary to do its passenger business, as it was from May last to Sept. 1st., 1864?

(Objected to as irrelevant and immaterial. Objection overruled, and exception taken.)

Ans. I should say six locomotives, eight or ten passenger coaches, and four baggage and express cars.

Ques. How many locomotives and how many freight cars were necessary to do the freight business?

367 Ans. I don't know. I am not sufficiently acquainted with its freight business.

Ques. How long is the Lake Shore road from Milwaukee to Chicago?

Ans. About eighty-six miles.

Ques. How many locomotives and passenger cars have you on that road, used in connection with the passenger business?

Ans. Eight locomotives for passenger business; eighteen first class, five second class coaches, and six baggage and express cars.

Cross-examined for Milwaukee and Minnesota Railroad Company:

Ques. Who is president of the Chicago and Milwaukee Railway Company?

Ans. Alexander Mitchell, of Milwaukee.

Ques. Do you know the road which now goes by the name of the Milwaukee and St. Paul Railway Company?

Ans. I suppose I do.

Ques. Has it any business connections with the Chicago and Milwaukee Railway Company, of which you are now the superintendent?

Ans. There are business connections between them, that is, we give and receive freight, to and from, and do business with each other.

Ques. Is not Alexander Mitchell, your president, a director in the St. Paul Railway Company?

Ans. I believe he is.

Ques. When the road, giving an excess of tonnage beyond what is received, had but one outlet to the seaboard for such tonnage, could it obtain any drawback for the excess so given to its only outlet?

Ans. I think not.

C. S. BALDWIN.

MAY 9TH, 1865.

Mr. Carpenter files stipulation marked Exhibit No. 16.

Mr. Carpenter offers a printed copy of a record in the case of Howard *vs.* The La Crosse and Milwaukee Railroad Company, and Selah Chamberlain.

368 Objected to by Mr. Cary on behalf of the Milwaukee and St. Paul Railway Company, and by Mr. Brown on behalf of the receiver, on the ground that the same is irrelevant and immaterial, but not for the reason that the same is not certified by the clerk. Objection overruled, and Messrs. Brown and Cary except. Said record is marked Exhibit No. 17.

Mr. Carpenter offers the record in the case of the Milwaukee and Minnesota Railroad Company *vs.* James T. Soutter and others, and

against the St. Paul Railway Company, together with the opinion of the Supreme Court and its mandate thereon.

Objected to by Mr. Brown on behalf of the receiver.

1. Because it is the mere declaration of a party in interest.

2. Because the opinion is in a case to which the receiver was not a party, and therefore could not be affected.

3. It is irrelevant and immeterial.

Mr. Cary, on behalf of the Milwaukee and St. Paul Railway Company, on the ground that it is irrelevant and incompetent. But neither objects upon the ground that they are not properly authenticated.

Objection overruled, and Messrs. Brown and Cary except.

Record received and marked Exhibit No. 18. Opinion of the court received and marked Exhibit No. 19; and the mandate received and marked Exhibit No. 20.

Mr. Cary offers in evidence the answer of the St. Paul company, to the bill of complaint contained in the record marked Exhibit 18.

Mr. Carpenter objects that it is incompetent evidence.

Objection overruled and exception by Mr. Carpenter. Answer marked Exhibit No. 21.

Wallace Pratt, a witness produced and heretofore sworn and examined on behalf of the Milwaukee and St. Paul company, being recalled and re-examined May 6th, 1865, by Mr. Cary, testified as follows:

Ques. Are you one of the firm of Cary and Pratt, practicing attorneys in the city of Milwaukee?

Ans. I am.

Ques. Did you make out and present that bill?

Ans. I did.

369 Ques. Will you state the facts in *facts in* regard to said charges?

Ans. The services for which charges are made in this bill were all rendered by the firm of Cary & Pratt for H. Crocker, receiver, and at his request, and the amounts charged are in my opinion a reasonable compensation for the services rendered. The bill mentioned is here put in evidence, and marked Exhibit X X X.

WALLACE PRATT.

Alexander Mitchell, a witness produced, sworn, and examined on the part of the Milwaukee & Minnesota Railroad Company and Alexander Fleming, May 5th, 1865, testified as follows:

Ques. Are you a director in the Milwaukee & St. Paul Railway Company?

Ans. I am.

Ques. Since what time?

Ans. I should think I came into the board within a few months after it was organized.

Ques. When was the Milwaukee & St. Paul Railway Company organized?

Ans. About two years ago.

Ques. Do you say positively that you were not made a director of the company on its organization?

Ans. Yes. I think I went into the board a short time after its organization.

Ques. Have you no memoranda by which you can determine when you went into the beard?

Ans. No. You can tell by referring to the minutes of the company.

Ques. Can you and will you furnish authenticated extracts from the minutes of the board of directors, showing when you were made a director?

Ans. The secretary can furnish that information to any person who chooses to apply?

Ques. Can you give a list of directors of the St. Paul company?

Ans. I can give you the names of some of them; don't know that I can all. At least they were directors, and are still, unless they have resigned within a few days.

370 Ques. Was Russel Sage made a director on the organization of the company?

Ans. My impression is he was not, but I am not sure on that.

Ques. Is he now president of the St. Paul Railway Company?

Ans. I understand that he is.

Ques. Is George Smith of Chicago, a director of the St. Paul railway company?

Ans. Mr. Smith was a director, but I understand that he tendered his resignation prior to leaving for Europe last December.

Ques. How many directors are there of the Milwaukee and St. Paul Railway Company?

Ans. I think thirteen compose a full board.

ALEX. MITCHELL.

James C. Spencer, a witness produced, sworn, and examined on behalf of Hans Crocker, receiver, May 2, 1865, testified as follows:

Ques. Are you the manager of the Milwaukee and Prairie du Chien railroad, and how long have you been connected with *with* railroads?

Ans. I am, and have been connected with railroads since 1848.

Ques. How long have you been engaged in the management of the Milwaukee and Prairie du Chien railroad?

Ans. Since January, 1861.

Ques. Have you made yourself familiar with the general business resources of Wisconsin, and with the routes of its railroads, and the general character of their business?

Ans. Yes.

Ques. Have you ever been over what is generally known as the eastern division of the La Crosse road, that is, from Milwaukee to Portage?

Ans. I have been over it twice.

Ques. Are you aware that what is known as the St. Paul Railway Company is now in possession of the western division, and have a line from Milwaukee to Portage of their own?

Ans. I am.

Ques. Taking it for granted that the western division of
371 the La Crosse road from Portage, belongs to the St. Paul company, and considering the eastern division as a separate road running from Milwaukee to Portage, what in your opinion, is the fair value per mile of that division?

(Objected to by Mr. Fleming as irrelevant. Objection overruled and exception noted.)

Ans. The thing is worth what it will fetch. The prices of the securities of the Milwaukee and Prairie du Chien Railway Company would purchase the road for about $23,000 per mile. Probably the Northwestern might be purchased for $20,000 per mile.

We have earned 7 per cent. on a cost of $31,000 per mile, but have never paid interest on over $22,000 per mile. I look on the whole Prairie du Chien road as about the same in value as the old La Crosse road; that is, to the income it would bring; both roads are dependent on the business out of the State, or west of the river, on account of the frequent failure of the crops in the State. With a good grain crop, the local business is large and profitable; with loss of crop, the local business is a mere nothing. As it was last year, our road from here to Madison could not have paid on $20,000 per mile. My own conviction is that a local road extending out 95 miles into the State, and terminating there, would not pay interest, year after year, on over $20,000.

Ques. Would the fact that a rival road like St. Paul exists, touching it at one point at Portage, and having a line extending through to the river, increase or diminish the value of the road?

Ans. It must of course diminish the value, having a competing line from the termination.

JAMES C. SPENCER.

Adjourned to Thursday, 4th, at 10.

James S. Brown, re-examined on behalf of the receiver, testified, May 6th, 1865, as follows:

The account here presented and marked Exhibit No. 12, was made out by me against the receiver, for services as his attorney in matters connected with his account, and also for advice in the management of his affairs as receiver. Since about the first of August last,
372 with the exception of the time taken up by the adjournment, from about the middle of November until the latter part of March last, there have been but a few days at any one time, in which I could be absent, on account of either actual hearing before auditor, or adjournments for hearings, although very frequently, upon the day of adjournment, nothing was actually done in the case. I think a very low charge is $1,500.

The other item of $100, is for assisting in trying the case of Rothe

*vs.* Crocker, receiver, for which $100 is a very reasonable charge. The services of myself, or some one, was in my opinion necessary for the receiver.

JAMES S. BROWN.

Alanson Cary, a witness produced, sworn, and examined May 8, 1865, testified as follows:

Ques. Are you secretary of the Milwaukee & St. Paul Railway Company?

Ans. I am.

Ques. Can you furnish a statement from the minutes of the board of directors of said company, showing who have been the president and directors of said company, from its organization to the present time, and the time when they respectively became, and ceased to be directors, and who constitutes the present board of directors?

Ans. Yes. The paper here produced and marked Exhibit No. 13, is such a statement, showing all called for by this question, and is taken from the minutes of said board of directors.

ALANSON CARY.

Mr. Cary, on behalf of the Milwaukee & St. Paul Company, here presents as evidence the paper marked Exhibit No. 13. Also the paper marked Exhibit No. 15.

373 Louis J. Higby, being duly sworn:

Ques. At the time Colonel Crocker took possession of the La Crosse road, were you in possession of the building known as Higby's elevator and warehouse, and did you claim it by lease made prior to that time?

Ans. I was in possession, and did so claim it.

Ques. Are you a party to either of the suits in regard to the La Crosse road?

Ans. I was not.

Ques. Was the elevator constructed by you at your own expense?

Ans. It was.

Ques. What has been about the cost to you of the elevator and warehouse?

Ans. Seventy-eight thousand dollars and a little over.

Ques. What is the average daily expense of operating the elevator and warehouse?

Ans. From $150 to $225 per day; of that about $2,500 per month, or $97 per day, is the expense of taking care of in and out freight at the depot, and billing goods and collecting freight.

Ques. What services do you perform in consideration of your lease free of charge for the railroad, and what is the annual value of those services?

Ans. I take the cars on the track and switch them to the elevator, weigh and unload the cars, send the weights to the office, unload all of the bagged grain at the sheds; flour, pork, and all the merchandise that comes in on the road. We receive in all the merchandise and

freight that goes out. We bill all of the out freight, collect all of the freight, and pay over the proceeds to the treasurer; the expense is a little rising of $30,000 per year.

Cross-examined by Mr. Fleming, for the Milwaukee & Minnesota Railroad Company:

Ques. Will you state under whose authority you hold and have held the elevator and warehouse of which you have spoken?

Ans. Under Selah Chamberlain, by lease; under the Milwaukee & Minnesota Railroad Company, by lease; under the Milwaukee & St. Paul Railroad Company by lease; and under Hans Crocker under an instrument, a copy of which is hereto annexed, and marked Exhibit A A A.

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Ques. Had the lease from the Milwaukee & Minnesota Railroad Company to yourself, of which you have spoken, expired at the time you took the lease from the Milwaukee & St. Paul Railway Company?

Ans. It had not, but all those leases were a continuation of the first; no one of them was a full lease except the first one.

Ques. How long had the lease for the Milwaukee & Minnesota Railroad Company to run at the time you took the lease from the Milwaukee & St. Paul Railway Company?

Ans. It was ten years from the time the lease was first given from Chamberlain.

Ques. What was the date of the lease from Chamberlain?

Ans. I think it was in 1858; I am not positive.

Ques. Was not one of the provisions of the lease of the Milwaukee & Minnesota Railroad Company to you that you should erect no buildings, except such as were subject to approval of that company?

Ans. I think it was subject to the approval of the superintendent of the road; that I have done.

Re-direct examination by Mr. Brown:

Ques. Will you furnish copies of all the instruments under which you claim?

Ans. Yes, sir, copies of said leases are hereto annexed, marked Exhibits A A A, B B B, C C C, D D D.

L. J. HIGBY.

Lindsay Ward, a witness produced and examined on behalf of the Milwaukee & St. Paul Railway Company, testified as follows:

Ques. Were you the receiver of the Milwaukee and Horicon Railroad Company, appointed by the district court of the United States? If yea, when and how long did you operate said road?

Ans. I was receiver, and operated the road about three years—a little short of three years—commencing on the 19th of July, 1860, and operated the road till about the middle of June, 1863.

375

Ques. Was the road operated in connection with the eastern division of the La Crosse road; what was the length of the Horicon road; what was the length of the La Crosse road from the

junction to Milwaukee; to what point did the business of the Horicon road principally tend, and who furnished the cars to transact the business?

Ans. The Horicon road was operated in connection with the eastern division of the La Crosse road; the length of the Horicon road was forty-two miles, and the length of the La Crosse road from the junction to Milwaukee, I believe, was fifty-one miles; the majority of the business of the Horicon road tended to Milwaukee; the Horicon road furnished the cars to transact the business.

Ques. What is a fair compensation to the eastern division of the La Crosse road for hauling the cars of the Horicon road from the junction to Milwaukee, and returning the cars with the return freight to the junction?

Ans. I should think 25 per cent. would be a fair compensation.

Ques. Are you acquainted with the La Crosse road from La Crosse to Milwaukee?

Ans. I have been over it, and am somewhat acquainted with it; more with the eastern division than with the western; don't know much about the western division; was never on that part of the road but once.

Ques. On the hypothesis that the interest in and ownership of that road was severed at Portage City, would the usual custom prevailing among railroads require that the eastern division allow a drawback on the excess of tonnage which the western division sends over the eastern division over and above what the western division received from the eastern division?

Ans. As to the custom prevailing among railroads I do not know what the prevailing custom is.

Ques. From your knowledge of the situation of this road, and your experience in railroading, should there be such drawback allowed the western division?

Ans. I think there should.

Ques. What amount?

376 Ans. I think 20 per cent.

Examined by Mr. Brown:

Ques. What was the amount of the gross annual receipts of the Horicon road while you were receiver?

Ans. I think $125,000 or $130,000 a year.

Ques. What amount per annum was allowed to you for acting as receiver of that road?

Ans. I was allowed for the time I was there $15,000.

Cross-examined by Mr. Fleming for the defendants:

Ques. What percentage of the through rate did you allow the La Crosse road during the time you were receiver of the Horicon road?

Ans. Fifty per cent.

Ques. Did you consider that at that rate you were making the best bargain in your power at that time for the Horicon road?

Ans. Yes, at the time I made it I did.

Ques. Did you pay 50 per cent. during the whole period of your receivership to the La Crosse road?

Ans. Yes.

Ques. When did your receivership terminate?

Ans. About the middle of June, 1863.

Ques. Was your contract with the receiver of the La Crosse road renewed every year?

Ans. No, sir; we settled up every month, and I as often protested that I was paying too much.

Ques. Up to the period of the termination of your receivership, could you have got the business done at any lower rate by any other road?

Ans. I think I could.

Ques Why did you not do so?

Ans. The reason I did not do so was the uncertainty of the time I should stay there. I might be turned out of the receivership any week or month; that was one reason; another was, if I made another arrangement and turned the freight off the road around by the Northwestern and Watertown roads, which I should have done if I had done anything and damages had resulted from it, they might have been personal to me.

377 Ques. What damage could have resulted?

Ans. Cars might have been smashed on the other roads and freights might have been injured.

Ques. Do you mean to say that the dangers and damages resulting from a division of the trade of the Horicon road were, in your opinion, more than an equivalent to the increased price you paid to the La Crosse road?

Ans. I thought, after looking the thing all over, as I was situated, it was not best for me to get into any controversy with the other roads, but if the Horicon road had been my own road, I should have made a different arrangement.

Ques. Have you ever been manager of any through road?

Ans. No, sir.

Ques. Have you ever been in any position which would enable you to give an opinion as to when a drawback on excess of tonnage should be allowed?

Ans. I have only been on the Horicon road, and I think that would.

Ques. Do you think the western division of the La Crosse road could have done any through business if the eastern division, in whole or in part, or some other connecting link with the sea-board, had not been constructed?

Ans. I don't think it would very much.

Ques. Would the eastern division, or any other road similarly situated towards the western division, being an only outlet, be apt to allow any drawback?

Ans. No, I think not, being an only outlet.

Re-examined by Mr. Cary:

Ques. From the time the Horicon road was first opened up to the time you were appointed receiver of it, had it always run in connec-

tion with the eastern division of the La Crosse road, and is that what you refer to when you say you were unwilling as receiver to make a change in its business?

Ans. It had always been in connection with the La Crosse road, and if I run it the same, and any accident happened, they could not find fault with me.

Re-examined by Mr. Brown:

378 Ques. Are you acquainted with the business of the La Crosse road, as it has been done during the last four years, and with the character of the duties of the receiver upon that road?

Answ. Somewhat generally acquainted with them.

Ques. What, in your opinion, would be a fair compensation for the services and responsibility of the receiver on that road; how much per annum?

Ans. Ten thousand dollars per annum if he was a good receiver, and attended to his duties faithfully.

Cross-examined by Mr. Fleming:

Ques. During the time you were receiver, did the other road offer to do your business at rates lower than 50 per cent.?

Ans. They gave me to understand that they would do it less; they did not make the offer, because I did not conclude to give them the business; the Northwestern road offered to pro rate, and the Watertown road proposed, when our cars were brought there to bring them in, so as to make it an object for us.

Ques. In a former answer you have said that by diverting trade from the eastern division you feared you might involve yourself in some legal responsibility; could you not, by applying to the court, have obtained some order which would have freed you from such responsibility, and enabled you to avail yourself of the cheaper rate which you say you could have made with the other road, and saved the difference for the trust under which you were appointed?

(Objected to, and objection overruled and exception taken.)

Ans. I never asked the court for any such order, and don't know whether I could have obtained one or not.

Ques. On the whole, then, do you mean to say that 50 per cent. was the lowest rate at which you could have done the business?

Ans. I mean to say that 50 per cent. was the lowest rate at which I could get it done on the start; afterwards, I could have got it done at a lower rate, but in view of the difficulties attending the change from one road to another, I thought it best to let it be as it was.

Re-examined:

379 Ques. In your answer as to the compensation the receiver would be entitled to, did you mean as receiver of the whole road, or of a portion of it?

Ans. I meant as receiver of the whole road.

Ques. Was your answer made with reference to your own knowledge of the duties of the receiver, and of the fact that the western

division of that road had passed out of the hands of the receiver in June, 1863?

Ans. I think he ought to have $10,000 a year.

Ques. Do you think the receiver is entitled to the same compensation for operating 95 miles of road as for operating 200 miles of road?

Ans. Cant't be quite as much, but still there is not much difference; either would take all his time.

LINDSAY WARD.

Benjamin K. Miller, a witness produced, sworn, and examined on the part of the receiver, testified as follows:

Adjourned to May 11th, 11 a. m.

Ques. Are you one of the firm of Finches, Lynde & Miller?

Ans. I am.

Ques. Do you recollect the fact of the existence of a judgment in favor of Graham and Scott *vs.* The La Crosse and Milwaukee Railroad Company, and one of Cleveland *against* The La Crosse Railroad Company?

Ans. I know of the judgment of Cleveland, for we are the attorneys in the case; I know by hearsay that there is such a judgment in favor of Graham and Scott.

Res. Have you had any conversation with the attorney of the Milwaukee & Minnesota Railroad Company, Mr. Carpenter, or have you had conversations, in which he took part, relating to payment by order of court upon the receiver of any judgment liens?

(Objected to as incompetent. Overruled, and exception taken.)

Ans. I have had a conversation with Mr. Carpenter upon the subject, and I heard a conversation upon that subject.

Ques. Please state, so far as you can recollect, all that was said and all that was done with a view to such payments, or in relation to such payments.

380 (Objected to as above. Overruled and exception taken.)

Ans. Mr. Carpenter and myself were in the street cars together, coming down town, when he remarked to me that he was going to make an application to the district judge for a payment on the judgment of Graham and Scott for $13,000, and requested me to go with him. We stopped at the post office; we got out and went up into the judge's room. He then made the application for such payment; the judge refused on the ground that the money must be paid out on the lien, according to their priority. I do not pretend to give the whole conversation, but I give the substance. Thereupon Mr. Carpenter got up from his chair, and said, "That's right, judge, pay as fast as you can, I consent;" and then we came away.

Ques. Was this an application for the order itself, or was it a preliminary conversation with reference to a future application to be made to court.

Ans. It was a verbal application. I took it to be for the order itself. No writings were presented.

Ques. During your conversation with Mr. Carpenter during this time, was any allusion made to the prior orders of the judge on the Cleveland judgment?

(Objected to. Overruled and exception.)

Ans. I can't state with certainty that there was.

Ques. If you have had other conversations with Carpenter at about that time, will you state whether or not therein allusion was made to payments on the Cleveland judgment?

Ans. No, not at or about that time.

Ques. Was this conversation, of which you speak, with Carpenter, before or after the orders made by the judge for payments on the Cleveland judgment?

Ans. My recollection is that two payments had been made on the Cleveland judgment prior to the application made by Mr. Carpenter; two were certainly made.

Ques. During these conversations did Mr. Carpenter suggest, either to you or the judge, any impropriety in an order of that kind made at Chambers?

(Objected to as immaterial. Overruled, and exception taken.)

381 Ans. He did not.

Ques. Did you have any conversation with Mr. Carpenter relative to a postponement of the payments on the Cleveland judgment in favor of a payment on the judgment of Graham and Scott?

(Objected to as immaterial and incompetent. Objection overruled, and Mr. Carpenter excepts.)

Ans. I had.

Ques. Will you please state what the conversation was?

(Objected to as above. Same ruling and exception.)

Ans. After leaving the judge's office I don't know whose suggestion it was, Mr. Carpenter's or my own; it was suggested that we endeavor to have Mr. Chamberlain waive his right to any money in the hands of the receiver, to the amount of $13,000, in favor of the judgment in favor of Graham & Scott; Mr. Chamberlain then owned the Cleveland judgment; I was to talk to Mr. Lynde and Mr. Carpenter was to talk to Mr. Emmons. I made the effort and failed.

Cross-examined by Mr. Carpenter:

Ques. State, as near as you can, the time of this interview with the judge.

Ans. I cannot nearer than this: it was after the first of February, 1862; I think in the spring of 1862; it was shortly after we moved into our present offices, and that was after the 1st of February, 1862.

Ques. I understand the only conversation you ever had with Mr. Carpenter upon this subject was on the same day of the interview with the judge?

Ans. No, sir; it is not the only conversation I had with him.

Ques. Was all the conversation which you have related as having had or heard with Carpenter on the day of the interview with the judge?

Ans. All I that I have related here was on the same day.

Ques. Had you been before spoken to on this subject by Mr. Graham?

Ans. I had never been asked by Mr. Graham to take any part in obtaining an order for the payment of any money.

Question. Had not Mr. Graham spoken to your partner,
382 Asahel Finch, and had not Mr. Finch spoken to you upon this subject before this time?

Ans. I don't know as to any conversation between Mr. Graham and Mr. Finch, and I have no recollection of Mr. Finch directing me to go up at the time of making this application.

Ques. Had not Finch previous to this spoken to you in regard to aiding me in procuring a payment to be made on that judgment?

Ans. Not to my recollection.

Ques. Was any application made on that day for any payment to be made upon anything else than the Graham and Scott judgment?

Ans. Not that I heard of.

Ques. In the conversation that was had with the judge, was any particular sum named? Did I not say to the judge that we had come to see whether some payment could not be obtained upon the Graham and Scott judgment, and did not the judge at once refuse to do it?

Ans. You stated that you came to make an application for an order for $13,000; that was the amount named. You made verbal application for a payment of $13,000 on the Graham and Scott judgment; the judge refused it on the ground that he must pay those claims according to the priority of liens. No writings whatever were presented to the judge at that time.

Direct examination resumed by Mr. Brown:

Ques. Was any reference made to the second mortgage, or retaining money for it at that time? If so, what was said?

Ans. The judge stated in substance that the second mortgage men had declined to take their interest according to the decree, and that there was money enough retained in the hands of the receiver to pay them at any time, according to the decree, and that he considered that the road was worth sufficient to pay all it owed.

Ques. Was it in this conversation that the judge made *made* the remark about paying the liens in their order?

(Objected to as leading, immaterial, and incompetent. Objection overruled, and Mr. Carpenter excepts.)

Ans. It was.

B. K. MILLER.

383 For the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE R. R. Company and others.

Examination of witnesses taken in pursuance and by virtue of an order of reference in the above-entitled cause of the 20th of Septem-

ber, A. D. 1864. Present, Saturday, Sept. 24, H. L. Palmer, special commissioner, Thomas L. Ogden, of counsel for complainants, Matt. H. Carpenter, of counsel for the Milwaukee & Minnesota Railroad Company and A. Fleming, John W. Cary, of counsel for the Milwaukee & St. Paul Railway Company.

Adjourned to Monday, Sept. 26, at 9 a. m.

MONDAY, *Sept.* 26, 1864.

Parties present as before.

Adjourned to Monday, Sept. 26, at 2 p. m.

MONDAY, *Sept.* 26, 1864, 2 *p. m.*

Parties present as before.

Examination of Russell Sage, as a witness produced, sworn, and examined in behalf James T. Soutter, trustee.

Russell Sage being first duly sworn and examined, testified as follows:

Ques. Do you know James T. Soutter, the complainant, and do you know of any personal attention he has given to this suit or to the interest of the bondholders licensed by this trust? and if so, what, when, and where?

Ans. I know Mr. Soutter, and have had conversations with him in relation to this mortgage, in the city of New York and also
384 in this city. I cannot state only what he told me about his personal attention. I know he came here to the city of Milwaukee in relation to the foreclosure of the mortgage and his duties as trustee. It was after the said war commenced. I also had conversation with him as a bondholder in New York, in relation to the foreclosure of the mortgage, and I have also with other bondholders, met him in New York on the same subject.

Ques. How much of this trust do you hold or represent?

Ans. I believe I hold and represent in the neighborhood of $800,000 at par. I can't state the exact amount.

Ques. Are you a trustee yourself in railroad mortgages, and are you familiar with the duties of trustees in railroad mortgages and with the amount of compensation allowed them in the foreclosure of mortgages?

Ans. I am a trustee in railroad mortgages. I have had some experience in the duties of trustees in the foreclosure of railroad mortgages and the compensation paid to trustees for such services.

Ques. What sum in your judgment would be a reasonable compensation to Mr. Soutter for his services as a trustee, and attending to the interests of the bondholders during the progress of this suit?

Ans. I think $1,500 would not be a high compensation.

Ques. Are you acquainted with David E. Wheeler, esq. Is he an attorney and counsellor at law, and do you know of his rendering any services to Mr. Soutter, in this suit?

Ans. I do know David E. Wheeler, he is an attorney and counsellor at law, and I know of his rendering services for Mr. Soutter

for the past five years, in the prosecution of this suit and in matters pertaining to it, and have met him, I presume more than a hundred times in consultation with bondholders and a committee of bondholders on the subject of this foreclosure. He also went to Washington last winter, and was there during the arguments on the appeals in this case, and advised with Mr. Soutter's attorney in fact, Mr. P. Dow.

Ques. Are you familiar with lawyers' charges for services similar to those rendered by Mr. Wheeler in this case, and with the compensation paid therefor?

Ans. I have had experience with lawyers who have rendered
385 similar services as those rendered by Mr. Wheeler, and the compensation paid them therefor.

Ques. What do you think would be a reasonable compensation for the services rendered by Mr. Wheeler?

(Objected to that the witness has not shown that he is a proper judge, particular payments being no criterion.

Objection sustained and question excluded, and complaint excepted.)

Ques. Have you acted, and are you now acting as the attorney in fact for Mr. Soutter, in the prosecution in this suit?

Ans. Yes.

Ques. As such did you employ Mr. Emmons to aid in the prosecution in this suit at Washington on the appeal?

(Objected to on the ground that the trustee could not appoint an attorney in fact to act for him. Overruled and exception.)

Ans. I did not.

Ques. Are you acquainted with F. A. Palmer, one of the former attorneys in fact of Mr. Soutter in this suit, and what services did he render for the complainant, and how was he appointed?

Ans. I am acquainted with F. A. Palmer. He came once to Milwaukee on business pertaining to the foreclosure of this mortgage, and I have met with the bondholder's committee, as it is called. I don't think he rendered much service, with the exception of coming out here and spending a few minutes occasionally with the bondholders; and, considering the use of the money which he received as such attorney, I should think $500 would be a reasonable compensation for all his services as such attorney in fact; he was a bondholder himself and generally turned the bondholders over to Mr. Wheeler when they applied there for information. I think from the conversation with Mr. Palmer, he told me that he received either $17,000 or $19,000 of the money received by P. Dow and himself.

Adjourned to the 27th, at 9 a. m.

SEPT. 27TH, 1864.

Examination of Russell Sage continued:

386 I arranged with Messrs. Brown and Carlisle as to the compensation for their services, including the services of Messrs. Ewing & Browning in this cause in the Supreme Court of the United States; the sum to be paid to each in addition to what they had previously

received, except as to Mr. Brown, was $2,000. That is, $2.000 to Mr. Brown, $2,000 to Mr. Carlisle, and $2,000 to Messrs. Ewing and Browning. Mr. Carlisle had $1,000, and Ewing and Browning had received $1,000 previously. Mr. Brown had a charge of $500 for previous services. I afterwards arranged with Mr. Brown for his services, coming from Washington here to attend the April term of this court, and the compensation for that service was fixed at $1,500. After the compensation had been agreed upon by Mr. Brown with Carlisle & Browning. at $2,000 as before stated, Mr. Ewing came on to Washington and complained, as Messrs. Brown & Carlisle informed me, that the sum of $2,000, in addition to what they had received, was an inadequate compensation for the services rendered. Mr. Ewing was not present at the argument before the court, and took no part in it. I was present during the entire argument before the Supreme Court. I know of P. Dow's services as attorney in fact for the complainant here, from the time of his appointment in the fall of 1859, down to May 1st, 1863. He had the general management of the business of the trustees and possession of the road for a portion of the time. He gave his whole time, I believe, or the most of it, during the period before named. I should say nearly half of that time he spent here, and the remainder in New York and Washington. I have consulted with bondholders, to the amount of $600,000, perhaps more than that, and they assented to a compensation of $5,000 per year, considering the responsibility, anxiety, annoyance, and absence from home. I should not consider the charge an unreasonable one, compared with compensations allowed for similar services. I know of Mr. Dow incurring large expenses for coming to Milwaukee and returning, and also in going to Washington on different occasions. I also know of his incurring expenses for printing. Mr. Carlisle informed me that he had received $1,000 from Mr. Dow, and Mr. Wheeler informed me that he had received $3,000 from Mr. Dow,
387 and I have seen a letter from Mr. Ewing, acknowledging that he had received $1,000 from Mr. Dow. Mr. Dow went to Washington last winter to advise and aid in getting the case ready for argument, and remained there during the whole of the argument. I think $250 would not be an unreasonable sum for his time and expenses on that trip to Washington. I know that Mr. Anderson was employed in the matter of the application for the appointment of a trustee in the place of Green C. Bronson, deceased. He was employed by Messrs. P. Dow and F. A. Palmer, acting for the complainant. The sum paid him for this service was $200. I was present at the argument of that case on two or three occasions.

Adjourned to the 28th inst., at 9 a. m.

SEPTEMBER 28TH, 9 A. M.

Cross-examination of Russel Sage in behalf of the Milwaukee & Minnesota Railroad Company:

Ques. Do you know that Mr. Dow was employed during all the time from the fall of 1859, down to May 1st, 1863, in the performance of the duties of the trust?

Ans. I know of his being engaged most of the time between the 1st of November, 1859, and the 1st of May, 1863; and he did render some service later than that, and I do not know of his being engaged in any other regular business during that time.

Ques. Do you mean to say that you know of your own knowledge that Mr. Dow occupied himself so closely in the performance of his duties in the trust as to prevent his doing any other business, and to entitle him to so large a salary as $5,000 per annum?

Ans. I do.

Ques. You have said that you were the attorney for M. Jas. T. Soutter; what is the date of the power of attorney so given to you?

Ans. September, 1864.

Ques. Where was Mr. Soutter at the time that power of attorney was given to you?

Ans. He was in Europe. My appointment as attorney for
388 Mr. Soutter is a substitution executed by Timothy H. Porter, having date in Sept., 1864, and Mr. Porter was appointed as attorney of Mr. Soutter in December, 1863.

Ques. Do you expect to receive the sum of money claimed for Mr. Soutter for his services, and pay the sum over to him as his attorney for his use and benefit?

Ans. I do.

Ques. Did you know at the time you received such power of attorney that Mr. Soutter was at that time in the employment of the enemies of the United States, and engaged in aiding and assisting the confederate government, so called, in Europe?

(Objected to as irrelevant and immaterial. Overruled and exception taken.)

Ans. I did not then, and do not now.

Ques. Do you say that you have never heard that Mr. Soutter has been in the employment for the last two years of the rebel government?

(Objected to as incompetent and irrelevant. Objection sustained and exception taken.)

RUSSEL SAGE.

Examination of Normon J. Emmons, a witness produced, sworn and examined in behalf of the complainants.

SEPTEMBER 28TH, 1864.

Normon J. Emmons, being first duly sworn and examined, testifies as follows:

I am an attorney and counsellor at law, admitted to practice in the federal and State courts—have been engaged in practice for eighteen years. I know David E. Wheeler, of New York. I have read and heard read the testimony of Russel Sage, taken in the case in reference to the services of David E. Wheeler, rendered to the trustee and the bondholders in this cause, and I have also some personal knowledge of those services—not to the extent to which Mr. Sage has testified, but partially. I know of his coming out here to Mil-

waukee, and I know of his acting for them in New York, and have had consultations with him in New York.

Ques. What, in your opinion, is the value of those services, and what would be a fair and reasonable compensation therefor?

389 Ans. I base my judgment, not only upon what I know myself, but also upon what has been stated by Mr. Sage, and what I have learned from other services, of the peculiar character of his services, and the extent of them; I estimate them worth $5,000. I fix that exact sum in my own mind, because other parties interested have fixed upon that amount as a compensation for his services, and think it a fair and reasonable compensation.

Ques. Were you employed by or in behalf of the bondholders in this cause, or any portion of them, to a suit in the prosecution of the appeal in the Supreme Court of the United States? If so, state when you were so retained, for whom, and what services you rendered?

Ans. I was. I was first retained in the court below, and by various bondholders representing first and last nearly eight hundred thousand dollars of the second mortgage bonds. I appeared for them on several occasions in the court below in the hearing of various motions and petitions, all after the original decree. I was also retained in several appeals to the Supreme Court of the United States, to assist in maintaining the integrity of those bonds. I spent nearly one hundred days in Washington on that business. At the same time, however, I had other and separate interests, connected with this same litigation, to look after while there. The second mortgage case, so called, however, was the chief and prominent feature.

Ques. What is the value of the services rendered by you to the bondholders in this case, and what would be a fair and reasonable compensation therefor?

Ans. I can only state, or rather I prefer not to state further than that at some considerable time ago, I rendered a bill for my services in Washington, and which I thought was fair and reasonable, and which has not been objected to. The amount of that bill was about twenty-five hundred dollars—a little over I think. That included my cash disbursements. The bill for my services was two thousand dollars; I still think that a reasonable compensation. For the services which I rendered in the court below to those bondholders, I have received my pay. I rendered much other service for the bondholders for whom I acted, and I never separated those ser-

390 vices, and I am unable now to fix any definite sum.

Ques. Have you been familiar with this suit since it was instituted up to the present time?

Ans. I have been.

Ques. State who acted as the solicitor in the case in the court below, and what, in your opinion, would be a fair compensation for his services for the entire litigation?

Ans. I take it for granted you mean the solicitor for the complainants. Considering the amount involved, the nature of the litigation, questions pending and the time consumed, I should say that six

thousand dollars would be a very reasonable fee or charge. Thomas L. Ogden acted as solicitor for complainant.

Ques. Do you know what services Mr. Brown performed in this case in the court below, and what was the value of them?

Ans. I do know what services Mr. Brown rendered in this case in the court below, and think he ought to have $3,500 for the services rendered by him up to the date of the decree. I have before expressed my opinion on that subject, and still adhere to it.

Cross-examined by Mr. Fleming:

Ques. Was not Selah Chamberlain a party defendant to the original bill of complaint in this cause?

Ans. He was.

Ques. Were you not his counsel at the time this bill was filed in this case, and did you not put in an answer for him in this cause?

Ans. I was his counsel, and appeared and answered for him through the whole conduct of the cause.

Ques. Did you not also appear for him in the Supreme Court at Washington last winter as his counsel, and file a brief for him in this cause?

Ans. No; I did not appear for him. I think there was no appearance for him, so far as the second mortgage case itself was concerned; on its merits I appeared no more for Mr. Chamberlain and acted no further for him than I did for other bondholders. There were two appeals up there in the Supreme Court, known as Nos. 267
391 and 268, which came on to be heard with the second mortgage case, and which two appeals were assigned to me exclusively to argue. In those two appeals Mr. Chamberlain's rights, other than as a bondholder, were discussed. In so far I acted on his behalf; but the same grounds of defence urged for him, the whole body of bond holders whom I represented were interested in maintaining.

N. J. EMMONS.

Examination of Thomas L. Ogden, a witness produced, sworn, and examined on behalf of James T. Soutter, trustee, &c:

Thomas L. Ogden, being first duly sworn and examined, testified as follows: I am an attorney and counsellor at law; I have acted as solicitor for the complainants in this cause ever since it was commenced; in the fall of 1859, Messrs. Palmer and Dow came to Milwaukee for the purpose of instituting the proceedings in this case; at that time Mr. Chamberlain was in possession of the railroad; after much negotiation between Messrs. Palmer and Dow and Mr. Chamberlain, a written contract was entered into between them, by which Messrs. Palmer and Dow, for the bondholders, were to have possession of all the net earnings of the road; Mr. Palmer was here personally during these negotiations; after they were completed, he returned to New York, and to my knowledge has not been here since; Mr. Dow from that time until the end of May or the beginning of June, 1860, remained in Milwaukee, receiving from Mr. Chamberlain the receipts of the road, as contemplated in that agreement or contract;

about the first of June, Mr. Chamberlain surrendered possession of the road to Mr. Dow, and he (Dow) held possession until possession was taken by the receiver; from that time until the spring of 1863, Mr. Dow spent a large portion of his time in Milwaukee, preparing testimony in the case, looking after the operation of the road, and consulting with and advising his attorneys; I should think that Mr. Dow, from my knowledge of his occupation during that period, must have devoted his whole, or nearly his entire time to the interests of the bondholders in this mortgage; I was present at the argu-
392 ment of this case in the court below, and know that Francis Randall took part in that argument; I also know of my own knowledge that he prepared a brief therein; I think the compensation of one thousand dollars for his services on that argument a reasonable one.

THOMAS L. OGDEN.

Examination of N. A. Cowdrey, a witness produced, sworn and examined by complainant, September 27th, 1864:

N. A. Cowdry, being first duly sworn and examined, testified as follows: I am a counsellor at law, admitted to practice in the Supreme Court of the United States and in the federal courts in the southern district of New York, and in the district of Connecticut, and have received and paid for a license from the internal revenue office; for the last six years I have given almost my whole time and attention to the foreclosure of railroad mortgages and to the adjustment of fees and charges of trustees and their counsel thereunder; I have heard the testimony of Russell Sage, given on his direct examination, as to the services of James T. Soutter and David E. Wheeler; I consider the amount charged by them as reasonable compensation for the services rendered by them, respectively—that is to say $1,500 for Soutter, and $5,000 for Mr. Wheeler; Mr. Soutter's charge is as small, or smaller, than I have ever known for similar services; I represent four-fifths of the cestui que trust negotiated with him upon the subject. and induced him to agree take that amount, and thought I did a good thing for the bondholders in getting him to take so low an amount; I have always deemed it necessary for trustees residing in New York to employ local counsel there to aid in protecting the trust when the trust property was situated in other States, or at a distance from New York, and to consult with the bondholders and parties interested in the trust; under this trust there are I think from two hundred to two hundred and fifty persons interested, mostly residing in New York and vicinity; I am myself a bondholder under this trust; I went to Washington and employed Mr. J. M. Carlisle as counsel for the complainant myself; he had once been employed by Mr. Dow at a previous term of the court; I acted for Mr. Soutter in employing him;
393 Mr. Carlisle argued various motions made in the Supreme Court in this cause, and argued the cause on its merits when it was reached on behalf of the complainants. In my opinion Mr. Carlisle's whole services were worth $3,000; I consider that a fair and sufficient compensation for his services; I know that Messrs. Ewing and

Browning were also retained for the complainants in this cause; Mr. Ewing argued one or two motions in and about this cause, and Mr. Browning argued the main cause and took part in the argument of one motion; these are the same services included in the account of Thomas Ewing, esq., filed in this cause; I think the sum three thousand dollars ($3,000) a reasonable compensation for the services of Messrs. Ewing and Browning; together with Mr. Russell Sage, I employed Mr. J. S. Brown as counsel for the complainant in this cause; we were acting as the agents of Mr. Soutter; Messrs. Brown and Emmons prepared the brief, on the motions made at the last term of the Supreme Court of the United States, and on the argument of the main cause; Mr. Brown argued two motions and the main cause in the Supreme Court; he also came from Washington to Milwaukee at the last April term of this court, and argued various questions made at that court in relation to this trust; I consider the sum of $3,500 a reasonable compensation to him for such services; I also have some knowledge of his rendering some services at the request of P. Dow, late attorney for Mr. Soutter, for which he charged $500; I think the services worth $500.

Cross-examined by Matt. H. Carpenter for the Milwaukee & Minnesota Railroad Company:

Ques. Do you know of your own knowledge whether Mr. Browning ever rendered any services for the complainant in this cause in Washington?

Ans. I do not think I was present at the argument; I did consult with Mr. Browning, and requested him to do certain things.

Ques. How long have you been a counsellor of the Supreme Court of the United States?

Ans. I was admitted at the December term, 1862.

Ques. Have you practiced in that court yourself, and to what extent?

394 Ans. I have; I am employed in the oldest case there, which has been pending about twenty-eight years; I have also been employed in all the litigation relating to the La Crosse road in that court.

Ques. How many causes have you argued in that court?

Ans. I have never argued any verbally; I have tried to furnish thunder for others from time to time.

Ques. For whom have you furnished thunder, for the complainant?

Ans. I have had consultations with each and every attorney and counsel employed for the complainant, and have given them the benefit of my ideas upon the various questions that have been brought up for the consideration of the counsel or court.

Ques. Which, in your opinion, professionally, is more difficult and valuable, to furnish thunder to others or to thunder it?

(Objected to, on the ground that it is irrelevant and immaterial. Objection sustained, and exception taken.)

Ques. Do you know Messrs. Brown and Ogden, of Milwaukee, and their standing at the bar?

Ans. I think I do.

Ques. What is that standing?

Ans. Very good.

Ques. Were not Mr. Ogden and Mr. Brown perfectly competent to conduct this cause in the said district court, assisted by your counsel and ideas?

Ans. I had nothing to do with this cause before the appeal.

Ques. Do you know the standing of Mr. Carlisle, of Washington, as a counsellor? If so, what is it?

Ans. He stands high.

Ques. Were not Mr. Carlisle and Mr. Brown, assisted by your own counsel and advice, perfectly competent to attend to this cause in said Supreme Court, on behalf of the complainant?

Ans. I think they were.

Ques. Do you not know that Mr. Browning stated to the Supreme Court, on the argument of this cause there, that he appeared only for S. Chamberlain, and did not the court assign time to him, as representing a party other than the complainant?

Ans. I do not know; I do know of counsel so agreeing among
395 themselves to so divide up the record as that three might be heard by the court, made at the solicitation of the complainant or his representative, Mr. Sage.

Ques. What three counsel was it agreed to speak in the cause?

Ans. I am certifying this only from hearsay.

Ques. Was not Mr. Wheeler a bondholder during all the time you speak of his rendering services?

Ans. He has told me that he was.

Ques. In your opinion, were Mr. Ogden and Mr. Brown perfectly competent and sufficient to conduct this cause in said district court, up to the time of the appeal?

Ans. I think they were competent and sufficient to attend to the business here in court.

Ques. What was there to be done professionally in New York while this cause was pending in the district court?

Ans. I had no particular knowledge of this cause until after the appeal was taken; in similar causes counsel there have to prepare the evidence, give instructions to counsel here, and hold very frequent consultations with cestui que trust, and conduct a large correspondence with parties in interest.

N. A. COWDREY.

James S. Brown, being duly sworn and examined, testified as follows:

Ques. by Mr. Hill. Were you counsel for the complainant in this cause in the Supreme Court of the United States, and who else was counsel with you?

Ans. Some time in the month of November, 1863, I was requested by parties then claiming to act for the complainant in this cause, to ascertain whether either Mr. Carlisle or Mr. Ewing, who, as I had

been informed, have been retained to argue the cause in Washington, had prepared a brief, and if not, then to prepare one myself; it was then understood that if Mr. Ewing should be present, he and Mr. Carlisle should argue the *the* case; as a fact, Mr. Ewing personally took no part, and I both drew the brief and argued the case in conjunction with Mr. Carlisle and others. Mr. Carlisle and my-
396 self, with others likewise, argued some motions; they were filed before the main argument of the case came on. The motions were overruled, so far as they affected the interests of the second mortgage, but we consented to have the cross bill considered as a part of the record. I may be mistaken as to Mr. Carlisle having taken an active part in the argument of those motions; he was present. The argument of the main cause took several days. It was conducted by Mr. Carpenter, myself, Browning, and Carlisle. I do not know of my own personal knowledge what the particular employment of Mr. Browning was. I understand that at a prior term of the court, Ewing, who was the partner of Browning, appeared with Mr. Carlisle for the complainants, on a preliminary motion in this case. That Ewing received a retainer from the trustee, and that in his absence Browning acted partially in pursuance of that retainer. After the case was argued, and before the decision, I was requested to make out my bill, and was told that they preferred then settling with and paying off the lawyers rather than to wait. I do not know who it was among those interested who gave this direction to me. I agreed to consult with Mr. Carlisle and Mr. Browning, and let them know what our charges would be. Mr. Carlisle and myself met by appointment, but Mr. Browning was not present. Mr. Carlisle, however, told me that Mr. Browning would consent to do as we did. Carlisle wanted me to fix the amount. I disliked it; and in fact, from an intimation that I had received, that Mr. Dow had charged me with a desire of increasing lawyer's fees in that case, I was determined to state an amount, either so low that no one could find fault, or leave it to Mr. Carlisle to take the responsibility of fixing a higher sum. I accordingly referred him to the fact that this was a proposition to pay before the case was decided, and that although we felt great confidence in the result, still there was a possibility that we might be defeated, and that our charge ought not to be an unreasonable one, even for that contingency. Carlisle, although I thought a little unwillingly, assented to the proposition, which was, that Messrs. Browning and Carlisle should each receive $2,000 in addition to what they had received for their services, and for drawing the brief, and the argument made by myself in the case,
397 I should receive the same sum, $2,000. This was agreed upon, with the express understanding between Mr. Carlisle and myself that the amount was to be paid at once, and before the decision of the case. In the early part of February, 1864, and I think within a day or two after this communication, I wrote to Mr. Hughes, president of the St. Paul road, stating the sum that had been agreed upon, and I think requesting that drafts might be forwarded, or that we might draw; although at this late time I should

prefer referring to the letter, which is in Mr. Hughes' possession, rather than to rely upon my own recollection. I have no recollection of the proposition to take the $2,000 ever having been accepted by any one acting in the interests of the trustees prior to the final decision of the case. I know that nothing was paid to me until subsequently to the decision. After the decision, which doubled the amount of the decree below, and expressly made the costs a charge upon the funds in the hands of the receiver, Mr. Carlisle informed me that as the other proposition had not been acted upon, and the result had in every respect been so favorable to the trustees in the mortgage, he and Mr. Browning had concluded to charge $5,000 each, which they thought a reasonable charge; and I will add, which I thought so too. This fact I communicated to the same parties who had been talking with me, and they said they were willing to pay the $2,000 but not the $5,000. I will here state that the first sum of $2,000 was assented to by Mr. Carlisle, with a view to the fact that the cause was then undecided, and the same was to be paid before the cause was decided, and I have no doubt that both Carlisle and Browning would then have accepted that sum; but we all believed that the decision of the cause, happening before final settlement, authorized a much higher charge, and made the first entirely insufficient. It is but right for me to say that I subsequently accepted the $2,000, gave a receipt in full, but with the understanding, on my part at least, that if more was allowed to others, there should be a similar increase of my own pay; and I filed my bill in the case at $5,000, with the consent of Mr. Sage, the person with whom I had settled, so to enable me to obtain the same amount with the rest. I made that settlement with the full belief that I was entitled
398 to more, but from the wish to avoid difficulties with clients, so far as had been paid, it was the understanding that my bill here was filed for the benefit of the trustees, or parties paying, and as to the surplus for my own benefit, I think my charge, as contained in the account here rendered, it is not an unreasonable one.

Cross-examined by Mr. Carpenter:

Ques. The settlement that was made between you and Mr. Sage for your services, was it made after you knew of the decision, and was it made by Mr. Sage, acting for the masters in this cause?

Ans. It was, and I think it was with Mr. Sage. It was done with some one acting for trustees, and the payment, as I understand, although not made out of the funds of the trustees, was made on their behalf. By referring to my memorandum book, I see that on Tuesday, 15th day of March, I received a letter from Sage enclosing a check of the St. Paul Railway Company upon the bank of North America, by which I was paid that charge.

Ques. Did any party in the Supreme Court litigate or question the right of the trustees to a decree according to the prayer of their bill, except those who are represented solely in that court by Mr. M. H. Carpenter?

Ans. Not so far as I understand it.

Ques. Was there, in your opinion, any reasonable necessity for the employment of any more than one counsel on the part of the trustees to argue their case in opposition to one counsel?

Ans. In a matter involving as this did, including interest of $1,490-000, and when in the court below, there had been a decree for only 50 per cent., I should have considered it imprudent for those acting in behalf of the complainants to trust the cause to one counsel only, and I should have been unwilling alone to assume the responsibility of the case; still it is possible that without any argument for the appellant, the same result might have been attained.

Ques. Do the rules of the Supreme Court permit more than two arguments on the same side of the cause?

399 Ans. I understand they do not, except by special permission of the court.

Ques. Was any application made on behalf of the trustees for leave to make more than two arguments on their behalf?

Ans. I know of none.

Ques. Do you not know that on the argument of the cause Mr. Browning stated to the court that he appeared for Mr. Chamberlain, one of the defendants, to argue the question between Mr. Chamberlain, and the Milwaukee and Minnesota Railroad Company, another defendant?

Ans. My recollection is that out of court we agreed upon the order of argument, and the length of time; it was agreed that I should open on behalf of the complainants; that he should follow in reply to me in behalf of his clients, and Emmons in behalf of Chamberlain; then Browning was to speak; then Carpenter again, and then Carlisle in behalf of the complainants was to close. So far as Browning was concerned, I do not now recollect whether or not it was stated to the court that he appeared in behalf of Chamberlain, but my recollection of his argument is, unless my memory deceives me, that more of his time was given to the 2d mortgage, and its defence, than to Mr. Chamberlain's separate interests.

Ques. Do you not remember that in the assignment of time to counsel, the four hours given to Emmons and Browning might be divided between them as they pleased?

Ans. I think it is very possible it might have been so, but I have no present recollection of it?

Ques. I understood that when you and Mr. Carlisle agreed to take $2,000 each, as stated by you, you both expected and believed that the decision of the cause would be what it subsequently was.

Ans. Yes; we were quite confident on the main points involved, and believed that it ought to be so as to the payment of attorney's fees; but there was one point in which, in our view, the decree was more favorable than we had anticipated; that of allowing the holders of bonds the choice, in case of sale either to take their money, or have a sum invested for them, which would protect their bonds.

400 Ques. Was the decree more unfavorable to the complainants than you expected in this, that it gave one year's redemption after the amount should be ascertained in the court below, before there could be a sale?

Ans. The year's delay was most unexpected, at least by me, and it was injurious to the complainants. I wish to add to my direct testimony, that since giving it, I have read the testimony of Mr. Sage. That I still have no recollection that the proposition made by me in behalf of myself and others, having been accepted prior to the decision, but I may have been mistaken as to that. That I have given the contents of my letter as near as I can recollect, but may have been mistaken, and prefer referring to the letter itself. That my recollection of these matters may be imperfect, as I have never expected either as party or witness to be involved in any controversy on the subject.

JAMES S. BROWN.

*Application of trustee, complainant, for allowance for expenses under deed of trust.*

401 United States circuit court, district of Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*against*
LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

To the honorable circuit court of the United States, district of Wisconsin:

The application of James T. Soutter, surviving trustee and complainant in the above-entitled cause, made in lieu of a similar one filed in this cause Sept. 20th, 1864, shows to this court that under the deed of trust mentioned and declared upon in the complaint in this cause, the complainant is entitled to be reimbursed for all expenses, costs, and disbursements, from and out of the property described in said deed of trust.

That in the prosecution of this case he, as trustee, has incurred large expenses and costs, and agreed to make large disbursements, all of which was necessary to properly protect the interest of the bondholders, secured by said trust deed, and a schedule of which expenses, costs, and disbursements is hereto annexed; and your applicant respectfully requests that the same may be allowed him, not exceeding amounts named in annexed schedule, and that the receiver may be ordered to pay over the amount thereof to your applicant, except for so much as is allowed as expenses, disbursements, and cost, made and incurred by P. Dow and F. A. Palmer, attorneys for your applicant, which your applicant asks that the same may be allowed and deducted from money in their hands, received as earnings of said railroad, previous to the appointment of said receiver.

Dated Sept. 26th, 1864.

JAMES T. SOUTTER,
*Surviving Trustee,*
By his attorney in fact, RUSSEL SAGE.

402 *Schedule of claims for expenses, disbursements, and costs incurred by James T. Soutter, surviving trustee, complainant.*

| | | | |
|---|---|---|---|
| 1. James T. Soutter, complainant | | | $1,500 00 |
| 2. Thomas L. Ogden, solicitor | | | 2,500 00 |
| 3. James S. Brown, counsel | | | 7,000 00 |
| 4. D. E. Wheeler, counsel | | | 2,000 00 |
| 5. J. M. Carlisle, counsel | | | 5,000 00 |
| 6. T. Ewing, counsel | | | 5,000 00 |
| 7. N. J. Emmons, counsel | | | 2,500 00 |
| 8. Prentiss Dow, attorney services | | | 17,500 00 |
| 9. F. A. Palmer, attorney services | | | 5,000 00 |
| | | | 48,000 00 |
| 10. P. Dow, additional services | | | 450 00 |
| 11. Dow and Palmer, attorney's disbursements, travelling expenses, clerk's fees, &c | $1,383 03 | | |
| 12. Brown & Ogden, solicitors | 5,000 00 | | |
| 13. F. Randall, counsel | 1,000 00 | | |
| 14. Thos. Ewing, counsel | 1,000 00 | | |
| 15. J. M. Carlisle, counsel | 1,000 00 | | |
| 16. D. E. Wheeler, counsel | 3,000 00 | | |
| 17. Copy of record | 380 00 | | |
| 18. Steamer Keokuk | 563 74 | | |
| | 13,366 77 | | |
| Less paid Brown & Ogden, by receiver | 5,000 00 | | 8,336 74 |
| | | | 56,786 77 |

403 Nos. 9 & 10.

District (now circuit) court of the United States for the district of Wisconsin, in equity.

GREENE C. BRONSON and JAMES T. SOUTTER, trustees,
*vs.*
THE LA CROSSE AND MILWAUKEE R. R. Company and others.

Disbursements of the complainant's in and about their trust under the authority given in the mortgage or deed of trust:

| | | |
|---|---|---|
| Travelling expenses, postages, printing copying papers, telegraph, clerks, certificates, &c., from Nov. 1, 1859, to March, 1864 | $1,549 62 | |
| Less refunded by J. M. Miller, clerk | 165 69 | |
| | | $1,383 93 |

*Counsel fees, viz:*

| | | | |
|---|---|---|---|
| Brown and Ogden | $1,000 00 | | |
| F. Randall | 5,000 00 | | |
| Thomas Ewing | 1,000 00 | | |
| J. M. Carlisle | 1,000 00 | | |
| D. E. Wheeler | 3,000 00 | | |
| | | $11,000 00 | |
| Less paid by order of court | | 5,000 00 | |
| | | | $6,000 00 |
| | | | 7,383 93 |
| J. M. Miller, clerk, for copy of the record for the Supreme Court of the U. S | | | 380 00 |
| Deposit for costs with the clerk of the Supreme Court Court of the U. S | | | 200 00 |
| Prentis Dow, for services as agent and attorney in fact for complainant's trustees from Nov. 1, 1859, to May 1, 1863, at $5,000 per annum | | | 17,500 00 |
| Same, for expenses and attendance at Washington on the hearing | | | 250 00 |
| 404 Legal expenses in the matter of the application for the appointment of a trustee in place of Bronson, deceased | | | 200 00 |
| F. A. Palmer, services as agent and attorney in fact of complainant from Nov. 1, 1859, to September, 1864 | | | 5,000 00 |
| Amount paid for repairs on the steamer Keokuk, upon the warrant of E. H. Gooderich, manager for S. Chamberlain, in March and April, 1860, before the trustees came into possession of the road | | | 573 74 |
| | | | 31,487 67 |
| Whole amount received | | | $34,739 95 |
| Disbursements as above | | | 31,487 67 |
| Deposited with F. A. Palmer | | | 3,252 28 |

STATE OF NEW YORK, *City and County of New York, ss:*

Francis A. Palmer and Prentis Dow, of the city, county, and State aforesaid, being severally sworn, each for himself, says that he was, on the first day of November, 1859, duly constituted and appointed the agent and attorney in fact of the above-named Greene C. Bronson and James T. Soutter, trustees, &c., as above named, in the above suit, and as such attorney and agent he has discharged the duties of said position to the present time; that the above is a true account of the charges and expenditures of said agents and attorneys in and about the said trust, and that the sums respectively paid for his

personal services and responsibilities is a just and reasonable compensation for the same.

F. A. PALMER.
P. DOW.

Sworn to before me this 6th day of September, 1864.
WM. S. HASCALL,
*Notary Public, City and County of New York.*

U. S. revenue stamp, cancelled.

405 *Exhibit M.—Attached to testimony taken before Palmer.*

Deed to the city of Milwaukee of September 1st, 1853, securing the issue of city bonds.

Milwaukee, Fond du Lac, and Green Bay Railroad Company to city of Milwaukee.—Mortgage.

This indenture, made the first day of September, in the year one thousand eight hundred and fifty-three, between the Milwaukee, Fond du Lac, and Green Bay Railroad Company, a corporation duly constituted as such by the laws of the State of Wisconsin, parties of the first part, and Alexander H. Johnston, treasurer of the city of Milwaukee, in the State of Wisconsin, for the use and benefit of said city of Milwaukee, party of the second part. Whereas, the said city of Milwaukee, pursuant to the terms of an act of the legislature of the State of Wisconsin, entitled "An act authorizing the city of Milwaukee to loan its credit in aid of certain railroads, approved April 2d, 1853," and of a certain other act of said legislature, entitled "An act to authorize the Milwaukee, Fond du Lac, and Green Bay Railroad Companies to consolidate," approved June 27th, 1853, and of an ordinance of the common council of the city of Milwaukee, entitled "An ordinance authorizing an issue of city bonds to the Milwaukee and Fond du Lac Railroad Company," passed May 19th, 1853, and approved by the legal voters of said city, at an election held for that purpose according to law, on the 7th day of June, 1853,
406 is to issue and deliver to the said parties of the first part the nogotiable corporate bonds of said city of Milwaukee in an amount or amounts not to exceed in all two hundred thousand dollars, payable twenty years from the date thereof, with interest, payable semi-annually, at the rate of seven per cent. per annum, both interest and principal payable at the Union Bank of New York, in the city of New York, as a loan by the said city to the said company, to aid in the construction of its railroad, under and in conformity with said acts and ordinance above mentioned. And the said Milwaukee, Fond du Lac, and Green Bay Railroad Company, for the security and indemnity of the said city for said issue and delivery of its bonds, as a loan to the said company as aforesaid, have this day executed to Alexander H. Johnston, treasurer of the said city of Milwaukee, and his successors in office, for the use and benefit of said city, the bond of said company, under the authority of its board of directors, signed by the president, and countersigned by the secretary, of said com-

pany, under the corporate seal of said company, in the penal sum of four hundred thousand dollars, with the conditions and covenants therein, that said railroad company shall punctually pay and discharge the principal and interest moneys of such bonds of said city as may be issued and delivered to the said company as a loan as aforesaid, as they shall severally become due, and shall also fully indemnify and save harmless the said city against all payments, liabilities, losses, damages, and expenses which it may incur or sustain in consequence of the issue or delivery of such bonds, or any portion thereof, according to the conditions of the said bond of the said company. Now therefore, this indenture, witnesseth: That the said parties of the first part, in order to secure the performance of the covenants and conditions of the said bond of the said company above stated, and in consideration of one dollar to them at the sealing and delivery hereof in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey to the said party of the second part, and his successors in office, for the use and benefit of said city of Milwaukee, all the following present, and in future to be acquired, property of the said parties of the first part, that is to say: The first section division of the railroad of said parties of the first part next to the city of Milwaukee, being and embracing that portion of said road commencing at the terminus of said railroad in the said city of Milwaukee and ex-
407 tending northwesterly on the line of said road to a point forty miles distant from the said city of Milwaukee, in the State of Wisconsin aforesaid, including the right of way and land occupied, or to be occupied, by said road, together with the superstructure and tracks thereon, and all rails and other materials used thereon, side tracks, bridges, viaducts, culverts, fences, equipments, depot grounds, and buildings thereon, engines, tenders, cars, tools, machinery, fixtures, and all other personal property, right thereto and interest therein, together with the name and functions appertaining to the said road, tolls, rents, and income to be had or levied therefrom, and all franchises, rights, and privileges of the said parties of the first part of, in, to, or concerning the same, as well that hereafter to be acquired and constructed as that already acquired or constructed, under their said acts of incorporation, wherever the same may be, but nothing herein contained shall be construed to prevent the said parties of the first part from collecting and appropriating towards the construction, use, and repairs of the remaining parts of said road northward all stock, subscriptions, donations or loans of money, and all bonds or other property not included in the foregoing description and not intended to be embraced in this indenture, which may have been or may hereafter be made for that purpose, but said party of the first part shall have full right so to proceed without let or hindrance from the said party of the second part, and his successors in office. It being distinctly understood that the conveyance made by this indenture is only for so much of the present right, interest, and

property, or in the future to be acquired rights, interest, and property of the said parties of the first part, as do or may exist on that part of said railroad extending from the city of Milwaukee, a distance of forty miles northwesterly on the line thereof, in the State of Wisconsin aforesaid. To have and to hold the said rights, property, and premises, and every part thereof, with the appurtenances thereunto belonging, unto the said party of the second part, and his successors in office, for the use and benefit of said city of Milwaukee forever. And the said parties of the first part hereby covenant to and with the said party of the second part that the said parties of the first part are well and truly seized of a good and perfect title to the premises above conveyed in the law, and have good right and lawful authority to convey the same, and that the title so conveyed is clear, free, and unencumbered, and that the said parties of the first part will forever warrant and defend the same to the party of
408 the second and his successors in office, for the use and benefit of said city against all claims whatsoever, except, and this conveyance is made by the said company and received by said party of the second part, subject only to a first and prior mortgage of the same rights, property, premises, and appurtenances above described, executed, or to be executed thereupon, for the sum not exceeding ten thousand dollars per mile for each and every mile of road embraced therein, and not exceeding in the aggregate four hundred thousand dollars. This conveyance is intended as a mortgage to secure the punctual payment and discharge of the principal and interest moneys of bonds of said city of Milwaukee to be issued and delivered as a loan to the said parties of the first part in an amount or amounts not to exceed in the aggregate two hundred thousand dollars to aid in the construction of the Milwaukee, Fond du Lac, and Green Bay railroad as aforesaid, and to secure the faithful performance of all the covenants and conditions of the said bond of even date herewith above alluded to; and in case the said parties of the first part shall fail to pay the principal or any part thereof, or any of the interest on any of the said bonds of the said city of Milwaukee, at any time when the same may become due and payable, according to the tenor thereof, or shall fail to perform any of the covenants and conditions of the said bond of said company, then the said party of the second part and his successors in office may at once enter into and take possession of all or any part of said premises and property for the use and benefit of said city of Milwaukee, and as the attorney in fact or agent of the said parties of the first part, by himself or agent or substitutes duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and additions thereto, and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of so much of the principal and interest of all said city bonds as remain unpaid, and of all liabilities of the said parties of the first part upon their said bond, or the said party of the second part and his successors in office, at his or their discretion, may cause the said premises and property, or so much thereof as shall be necessary to pay and

discharge the principal and interest of said city bonds, or so much thereof as may then be due and unpaid as aforesaid, and to indemnify and save harmless the said city from and against all liabilities, loss, and expenses incurred in consequence of the issue of its said bonds, to be sold at public auction in the city of Milwaukee, in the State of Wisconsin aforesaid, or in the city of New York, giving at
409 least forty days' notice of the time, place, and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in each of the cities aforesaid, and wherever else required by law, and execute to the purchaser or purchasers thereof at such sale a good and sufficient deed of conveyance in the law for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, except the holder or holders of said first or prior mortgage, of all right, interest, or clai n in or to said premises and property, or any part thereof. And said party of the second part shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing said property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due or unpaid on said bonds and to the indemnity of the said city as aforesaid, and shall restore the residue thereof to the parties of the first part. It being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said parties of the first part, nor any injunction or stay of proceedings, or any process be applied for or obtained by them to prevent such entry or sale as aforesaid. And the said parties of the first part hereby covenant for the consideration aforesaid to execute and deliver any further reasonable and necessary conveyance of the said premises and property, or any part thereof, to the said party of the second part, and his successors in office, for the use and benefit of said city, for more fully carrying into effect the objects hereof, particularly the conveyance of any rights or property, subsequently to the date hereof, acquired by said parties of the first part, and comprehended in the description hereinbefore contained. And the said parties of the first part hereby further covenant, for the consideration aforesaid, that the said city bonds so to be issued and delivered as a loan to the said parties of the first part as aforesaid, and all of said bonds, or the avails thereof, shall be faithfully applied to the construction and completion of the said first section or division of forty miles of said Milwaukee, Fond du Lac, and Green Bay railroad, next to said city of Milwaukee, and intended to be embraced within this indenture. And the said company do further covenant and agree that the said prior mortgage or lien upon said property and premises, in case of default in the performance of the covenants and conditions therein contained, shall not authorize the sale of said mortgaged premises and property for
410 such default without public notice of such sale being given in the manner required by law, and for at least sixty days prior to such sale. And these presents are upon this express condition, that on payment by said parties of the first part of the principal and

interest of said city bonds, and on the full and complete performance by the said parties of the first part of all the covenants and conditions of their said bond above referred to, and of this indenture, the estate hereby granted to the said party of the second part shall be void and the right to the premises hereby conveyed shall revert to and revest in the said parties of the first part without any acknowledgment of satisfaction, re-conveyance, re-entry, or other acts.

In witness whereof the said Milwaukee, Fond du Lac, and Green Bay Railroad Company have caused their corporate seal to be hereto affixed and these presents to be signed by the president and countersigned by their secretary, the day and year first above written.

[SEAL.] JAMES KNEELAND,

*Pred't Milwaukee, Fond du Lac Green Bay R. R Co.*

J. N. MASON, *Secretary.*

411 *Exhibit K K.*

Testified to by E. H. Goodrich.

H. L. PALMER.

Statement of mileage of rolling stock on the western division from the 13th June, 1863, to 1st July, 1864.

| Locomotives: | Miles. |
|---|---|
| From 13 June, 1863, to Feb'y 1st, 1864 | 205,836 |
| From Feb'y 1st, 1864, to June 1st, 1864 | 114,343 |
| From June 1st, 1864, to July 1st, 1864 | 45,675 |
| Pass. cars: | |
| From June 13, 1863, to March 1st, 1864 | 237,574 |
| From March 1, 1864, to June 1, 1864 | 66,110 |
| From June 1, 1864, to July 1, 1864 | 36,845 |
| Bag'e, mail, and express: | |
| From June 13, 1863, to March 1, 1864 | 180,232 |
| From March 1, 1864, to July 1, 1864 | 22,040 |
| Freight cars: | |
| From June 13, 1863, to March 1, 1864 | 1,255,723 |
| From March 1, 1864, to June 1, 1864 | 704,277 |
| From June 1, 1864, to July 1, 1864 | 359,491 |

412 *Exhibit L L.*

Produced and testified to by E. H. Goodrich.

H. L. PALMER, *Auditor.*

Statement of operation of the La Crosse and Milwaukee railway, eastern division, for the month of May, 1864.

Earnings eastern division:

| | |
|---|---|
| From freight | $81,987 03 |
| Passengers | 22,723 66 |
| Mails, rents, and miscellaneous | 884 96 |
| Use of rolling stock | 3,682 58 |
| | 109,278 23 |

Expenses:

| | |
|---|---|
| Repairs of road | $14,802 37 |
| bridges | 151 90 |
| buildings | 848 62 |
| locomotives | 821 74 |
| cars | 1,723 64 |
| Tools and machinery | 1,177 05 |
| Operating, management, and general officers | 921 57 |
| Foreign agency and advertising | 405 80 |
| Station service | 4,058 48 |
| Stationery | 482 95 |
| Conductors, baggagemen, and brakemen | 3,095 81 |
| Train and station supplies | 887 53 |
| Engineers, firemen, and wipers | 4,878 18 |
| Oil and waste | 2,248 07 |
| Fuel | 4,743 00 |
| Loss and damage of freight and baggage | 232 66 |
| Car service | 222 85 |
| Miscellaneous expenses | 120 07 |
| Animals killed | 20 00 |
| Telegraph | 71 88 |
| Use of rolling stock | 21,598 65 |
| Other expenses, taxes U. S. rev | 682 91 |
| Renewal of track | 10,115 59 |
| New buildings | 6,533 74 |
| Furniture | 43 76 |
| | 80,879 82 |

Recapitulation:

| | |
|---|---|
| Gross earnings | $109,278 23 |
| Total expenses | 80,879 82 |
| Net earnings | 28,398 41 |

413 *Exhibit M M. Testified to by E. H. Goodrich.—H. L. Palmer, Auditor. Milwaukee and St. Paul Railway Company's machine shops. Report of repairs from June* 13, 1863, *to June* 1, 1864. *Main line.*

| | Machinist's labor. | Carpenter's labor. | Blacksmith's labor. | Painter's labor. | Painter's stock. | Copper and composition. | Lumber. | Wrought iron and steel. | Cast iron. |
|---|---|---|---|---|---|---|---|---|---|
| Engines | $25,247 20 | $2,374 09 | $6,270 62 | $1,224 03 | $651 02 | $4,492 50 | $342 85 | $3,324 21 | $1,525 52 |
| Passenger cars | 501 37 | 6,346 21 | 1,338 09 | 1,674 46 | 405 42 | 1,227 29 | 301 52 | 1,601 67 | 939 24 |
| Baggage cars | 36 25 | 488 87 | 105 39 | 169 03 | 66 83 | 479 43 | 245 73 | 203 43 | 112 74 |
| Mail and exp. cars | 12 50 | 128 20 | 35 01 | 23 70 | 15 00 | 214 85 | 15 45 | 26 38 | 133 01 |
| Box cars | 463 75 | 11,758 91 | 4,313 41 | 638 10 | 774 28 | 4,063 65 | 2,498 83 | 8,620 88 | 2,976 06 |
| Flat cars | 7 24 | 1,793 73 | 399 01 | 20 32 | 3 74 | 1,141 89 | 672 83 | 795 49 | 614 16 |
| Caboose cars | 110 59 | 311 59 | 52 91 | 5 12 | 4 61 | 315 59 | 43 19 | 132 87 | 160 86 |
| Hand cars | 452 99 | 333 74 | 120 17 | 23 97 | 30 07 | 57 79 | 15 60 | 291 48 | 85 57 |
| Cars in general | ..... | 3,665 34 | 296 16 | 207 81 | 163 54 | 36 94 | 394 04 | 55 18 | 31 98 |

*Exhibit M M.*—Continued.

| | Springs. | Tires. | Wheels. | Axles. | Other materials. | Total. | Credits. | Total. |
|---|---|---|---|---|---|---|---|---|
| Engines | | $5,760 63 | $3,658 15 | $336 12 | $2,307 33 | $57,514 36 | $3,472 12 | $54,042 24 |
| Passenger cars | $431 98 | | 2,894 50 | 1,119 36 | 1,248 57 | 20,029 68 | 943 07 | 19,086 61 |
| Baggage cars | 5 00 | | 759 00 | 129 68 | 165 89 | 2,967 27 | 294 37 | 2,672 90 |
| Mail and exp. cars | 30 00 | | 361 00 | 164 60 | 102 20 | 1,261 90 | 202 46 | 1,059 44 |
| Box cars | 641 30 | | 7,299 62 | 2,133 00 | 5,115 99 | 51,297 78 | 3,895 03 | 47,402 75 |
| Flat cars | 212 00 | | 1,048 00 | 44 00 | 281 61 | 6,034 02 | 156 00 | 5,878 02 |
| Caboose cars | 36 00 | | 440 00 | 33 25 | 173 86 | 1,820 44 | 11 30 | 1,809 14 |
| Hand cars | | | 266 68 | 39 50 | 45 50 | 1,763 05 | 20 00 | 1,743 05 |
| Cars in general | | | 68 00 | 88 00 | 1,179 71 | 6,186 70 | 242 82 | 5,943 88 |
| | | | | | | 148,875 20 | | 139,638 03 |

| | |
|---|---|
| Engines | 31 |
| Pass. cars | 18 |
| Baggage cars | 9 |
| Mail and express | 3 |
| Mail and express, 2 mor | 3 |
| Box cars | 498 |
| Platform cars | 77 |
| Caboose cars | 6 |
| Hand cars | 45 |

414 *Exhibit N N.*

Testified to by Hans Crocker.

H. L. PALMER.

Statement of rolling stock purchased and built by H. Crocker, rec'r, from June 11, 1860, to June 13, 1863.

Engines purchased, Nos. 22, 23, 24, 28, 29, 30, and 36.

| | Cars. |
|---|---|
| Box cars purchased: | |
| Alternate Nos.....546 to 632 | |
| 650 to 728 | |
| 802 to 900—133 | |
| Box cars built: | |
| Alternate Nos.....446 to 544 | |
| 634 to 648 | |
| 730 to 800— 94 | |
| Caboose cars built: | |
| Consecutive Nos..... 1 to 6— 6 | |
| Baggage cars built: | |
| No. 9..... 1 | |
| Passenger cars built: | |
| Consecutive Nos..... 19 and 20— 2 | |

The Milwaukee and St. Paul Railway Company delivered to the receiver, in pursuance of the order of the court made about May 1, 1864, forty-seven and one-half per cent. of the foregoing, or so much as was on the road at that time not worn out or destroyed.

415 *Exhibit R R.*

Attached to testimony taken before Palmer.

Deed to the city of Milwaukee of July 13th, 1854, securing the issue of city bonds, $200,000.

La Crosse and Milwaukee Railroad Company to the city of Milwaukee. Mortgage.

This indenture made the thirteenth day of July, in the year one thousand eight hundred and fifty-four, between the La Crosse and Milwaukee Railroad Company, a corporation duly constituted as such by the laws of the State of Wisconsin, parties of the first part, and Ferdinand Kuehn, treasurer of the city of Milwaukee, in the State of Wisconsin, for the use and benefit of the said city of Milwaukee, party of the second part.

Whereas the said city of Milwaukee, pursuant to the terms of an act of the legislature of the State of Wisconsin, entitled "An act authorizing the city of Milwaukee to loan its credit in aid of certain railroads," approved April 2d, 1853; and of an ordinance of the com-

mon council of the city of Milwaukee, entitled "An ordinance authorizing an issue of city bonds to the La Crosse and Milwaukee Railroad Company," passed June 2d, 1853, and approved by the legal voters of said city, at an election held for that purpose according to law, on the 23d day of June, 1853, is to issue and deliver to the said parties of the first part the negotiable corporate bonds of the said city of Milwaukee in an amount or amounts not to exceed in all two hundred thousand dollars, payable in twenty years from the
416 date thereof, with interest, payable semi-annually, at the rate of seven per cent. per annum, both interest and principal payable at the office of Duncan, Sherman & Co., in the city of New York, as a loan by the said city to the said railroad company, to aid in the construction of its railroad, under and in conformity with said act and ordinance above mentioned. And the said La Crosse and Milwaukee Railroad Company, for the security and indemnity of the said city for said issue and delivery of its bonds, as a loan to the said company as aforesaid, did, on the 16th day of February, 1854, execute to Alexander H. Johnson, treasurer of the said city, and his successors in office, for the use and benefit of said city, the bond of said company, under the authority of its board of directors, signed by the president and countersigned by the secretary of said company, under the corporate seal of said company, in the penal sum of four hundred thousand dollars, with the condition and covenants therein that said railroad company shall punctually pay and discharge the principal and interest moneys of such bonds of said city as may be issued and delivered to said company, as a loan aforesaid, as they shall severally become due, and shall also fully indemnify and save harmless the said city against all payments, liabilities, costs, damages, and expenses which it may incur as sustain in consequence of the issue or delivery of such bonds, or any portion thereof, according to the conditions of the said bond of the said company. Now, therefore, this indenture witnesseth that the said parties of the first part, in order to secure the performance of the covenants and conditions of the said bond of the said company above stated, and in consideration of one dollar to them in hand paid, at the sealing and delivery hereof, by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey to the said party of the second part, and to his successors in office, for the use and benefit of said city of Milwaukee, all the following present and future to be acquired property of the said parties of the first part, that is to say: The first part of the railroad of the said parties of the first part, commencing at the point where it leaves the line heretofore adopted by the Milwaukee, Fond du Lac, and Green Bay Railroad Company, in the county of Washington; thence westward to the town of Beaver Dam, in the county of Dodge, being a distance of forty miles, including the right of way, land occupied, or to be occupied, by said railroad, together with
417 the superstructure and tracks thereon, and all rails and other materials used thereon, side tracks, bridges, viaducts, culverts,

fences, equipments, depot grounds and buildings thereon, engines, tenders, cars, tools, machinery, fixtures, and all other personal property, within the limits aforesaid, rights thereto and interest therein, together with the name and functions appertaining to the said road, tolls, rents, and income, to be had or levied therefrom, and all franchise, rights, and privileges of the said party of the first part, of, in, to, or concerning the same, as well that hereafter to be acquired and constructed, as that already acquired and constructed, under their said act of incorporation, wherever the same may be within the limits aforesaid; but nothing herein contained shall be construed to prevent the said parties of the first part from collecting and appropriating towards the construction, use and repairs of the remaining part of said road, westward and northward, all stock, subscriptions, donations and loans of money, and all bonds or other property not included in the foregoing description and not intended to be embraced in this indenture, which may have been or may hereafter be made for that purpose, but the said party of the first part shall have full right so to proceed without let or hindrance from the said party of the second part, and his successors in office, it being distinctly understood that the conveyance made by this indenture is only for so much of the present rights, interest or property, or in the future to be acquired rights, interests, and property, of the said parties of the first part, as do or may exist on that part of said railroad extending from the said road in the county of Washington, where it leaves the line heretofore adopted by the Milwaukee, Fond du Lac, and Green Bay Railroad Company, westward to the town of Beaver Dam, in the county of Dodge, a distance of forty miles. To have and to hold the said rights, property, premises, and every part thereof, with the appurtenances thereunto belonging, unto the said party of the second part, and his successors in office, for the use and benefit of the said city of Milwaukee forever; and the said parties of the first part hereby covenant to and with the said party of the second, that the said parties of the *parties of the* first part are well and truly seized of a good and perfect title to the premises above conveyed in the law, and have good right and lawful authority to convey the same, and that the title so conveyed is clear, free, and unencumbered, and that the said parties of the first part will forever warrant and defend the same to the said party of the second part,
418 and his successors in office, for the use and benefit of said city against all claims whatsoever, except, and this conveyance is made by the said company, and received by the said party of the second part, subject only to a first and prior mortgage of the same rights, property, premises, and appurtenances above described, executed thereupon, for a sum not exceeding ten thousand dollars for each and every mile of road embraced therein. This conveyance is intended as a mortgage the secure the punctual payment and discharge of the principal and interest moneys of the bonds of the said city of Milwaukee, to be issued and delivered as a loan to the said parties of the first part, in an amount not to exceed in the aggregate two hundred thousand dollars, to aid in the construction of the La

Crosse and Milwaukee railroad as aforesaid, and to secure the faithful performance of all the covenants and conditions of the said bond of the said parties of the first part, dated the sixteenth day of February, 1854, as aforesaid, and above alluded to; and in case the said parties of the first part shall fail to pay the principal, or any part thereof, or any of the interest, or any of the said bonds of the said city of Milwaukee at any time when the same may become due and payable, according to the tenor thereof, or shall fail to perform any of the covenants and conditions of the said bond of the said company, then the said party of the second part, and his successors in office, may at once enter into and take possession of all or any part of the said premises and property, for the use and benefit of the said city of Milwaukee, and as the attorney in fact or agent of the said parties of the first part, by himself or agents, or substitutes, duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and additions thereto, and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of so much of the principal and interest of all of said city bonds as remains unpaid, and of all liabilities of the said parties of the first part upon their said bonds; or the said party of the second part, and his successors in office, at his or their discretion, may lease the said premises or property, or so much thereof as shall be necessary to pay and discharge the principal and interest of the said city bonds, so much thereof as may then be due and unpaid, as aforesaid, and to indemnify and save harmless the said city from and against all liabilities, losses, and expenses incurred in consequence of the issue of its said bonds, to be sold at public auction, in the city of Milwaukee,
419 in the State of Wisconsin aforesaid, or in the city of New York, giving at least forty days' notice of the time, place, and terms of such sale, and of the specified property to be sold, by publishing the same in two newspapers of good circulation in each of the said cities aforesaid, and wherever else required by law, and execute to the purchaser or purchasers thereof, at such sale, a good and sufficient deed of conveyance in the law for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, except the holder or holders of the said first or prior mortgage, of all the right, interest, or claim in or to said premises and property, or any part thereof; and the said party of the second part shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing said property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due or unpaid on said bonds, and to the indemnity of the said city as aforesaid, and shall restore the residue thereof to the parties of the first part. It being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said parties of the first part, nor any injunction nor stay of proceedings or any process be applied for or obtained by them to prevent such entry or sale as aforesaid; and the said parties of the

first part hereby covenant for the consideration aforesaid to execute and deliver any further reasonable and necessary conveyance of the said premises and property, or any part thereof, to the said party of the second part, and his successors in office, for the use and benefit of the said city, for more fully carrying into effect the object hereof, particularly for the consequence of any rights or property subsequently to the date hereof, acquired by the said parties of the first part, and comprehended in the description hereinbefore contained; and the said parties of the first part hereby further covenant for the consideration aforesaid that the said city bonds, so to be issued and delivered as a loan, to the said parties of the first part, as aforesaid, and all of said bonds, or the avails thereof, shall be faithfully applied to the construction and completion of the said section of division of forty miles of said La Crosse and Milwaukee railroad, and embraced, or intended so to be, within this indenture; and the said company do further covenant and agree that the said prior mortgage or lien upon said property and premises, in case of default in the per-
420 formance of the covenants and conditions therein contained, shall not authorize the sale of said mortgage premises and property for such default, without public notice of such sale being given in the manner required by law, and for at least ninety days prior to such sale; and these presents are upon this express condition, that on the payment by the said parties of the first part of the principal and interest of said city bonds, and on the full and complete performance by the said parties of the first part of all the covenants and conditions of their said bond above referred to, and of this indenture, the estate hereby granted to the said party of the second part shall be void, and the right to the premises hereby conveyed shall revert to, and revert in, the said parties of the first part, without any acknowledgment of satisfaction, reconveyance, warranty, or other act.

In witness whereof the said La Crosse and Milwaukee Railroad Company have caused their corporate seal to be hereunto affixed, and these presents to be signed by their president and countersigned by their secretary, the day and year first above written.

[SEAL.] STODDARD JUDD,
*President of the La C. & M. R. R. Co.*

Signed and sealed in presence of—
J. H. DAWES,
R. WHITEHEAD.

STATE OF WISCONSIN, *Milwaukee County, ss:*

I, Robert Whitehead, notary public in and for said county of Milwaukee, do, by this instrument, give under my hand and official seal, certify, that on this thirteenth day of July, 1854, before me, personally appeared Stoddard Judd, who, being by me duly sworn, said that he is the president of the La Crosse and Milwaukee Railroad Company, that the seal affixed to the above instrument is the common and corporate seal of said company, and was affixed thereto

by their authority, and that he, as president, subscribed his name thereto by the like authority, said Stoddard Judd being personally known to me to be the same person who executed said instrument.

[SEAL.] R. WHITEHEAD,
*Notary Public, Milwaukee Co., Wisconsin.*

421 *Exhibit S. S.*

Testified to by E. H. Goodrich.

H. L. PALMER.

Eastern divison La C. & M. R.R., in account with the western division of Mil. & St. Paul R'y.

1864.

March 1. To 148 410-2240 tons old rail.
April 21. To 23 1780-2240 tons old rail.

171 2190-2240

*Contra.*

1864.

Aug. 31. By 42 939-2240 tons old rail.

Balance due western div. M. & St. P. R'y, 129 1251-2240 tons.

422 *Exhibit T. T.*

Testified to by E. H. Goodrich.

H. L. PALMER.

This contract, made and entered into by and between the Milwaukee and St. Paul Railway Company by Edwin H. Goodrich, general manager thereof, party of the first part, and the Swedes Iron Company by David A. Benjamin, treasurer of said company, party of the second part—

Witnesseth, that in consideration of the mutual covenants herein contained, said party of the first part agrees to receive and transport for said party of the second part, iron ore, iron coal, fire brick, hearth stone, and limestone, to and from the mines of Iron Ridge, in Dodge county, Wisconsin, to the city of Milwaukee, and deliver the same at such point or points on the line of the railroad now known as the eastern division of the La C. & M. R.R'd, or on any branch connecting therewith in said city, as may be designated by said party of the second part, for and at the price of sixty cents per ton of two

thousand pounds, payable in gold, or its equivalent in the legal currency of the United States; and if paid for in such currency, the price shall be greater in the same ratio as the current value of the standard gold coin of the U. S. is greater than said currency, as the same shall be quoted from time to time at the board of brokers in the city of New York: Provided, however, that when said quotations shall be such that gold is rated at three per cent. or less above such currency, then such currency shall, for the purposes of this contract, be rated at par. The quotations so made on the fifteenth day of each month shall govern under the terms of this contract for payments that may be earned in all that month, but in case such quotations should not be made on the fifteenth day of any month, then the first quotation which shall be thereafter made from said board shall rule for the purposes of this contract during all of said month.

Also said party of the first part agrees to receive from said party of the second part all the above-mentioned articles at any point as aforesaid, in the city of Milwaukee, and transport and deliver the same to said party of the second part at such point at Iron Ridge as said party of the second part shall designate on the line of road aforesaid,
423 or any branch connecting therewith not exceeding three miles in length, at the price and on the terms above-mentioned.

It is understood and agreed that said party of the second part will construct a good and permanent branch railroad in continuation of the side track now laid at Iron Ridge station on the line of the railroad aforesaid, or from such other point on said railway as shall be agreed upon by the parties hereto, and thence to the Iron Ridge mines, and put the same in complete order for use, and grant to said party of the first part the right to use the same for the purpose of transporting the articles herein mentioned, and also for running trains for such other purposes as said party of the first part may require during the term of this contract, in consideration of the performance by said party of the first part of the covenants herein contained on its part; subject, however, to the right reserved by said party of the second part, to have the free and unrestricted use of the same when not used by the party of the first part, as above provided. And it is further understood and agreed, that said party of the first part will loan to said party of the second part the iron rails that will be necessary to lay the track of said branch road, not exceeding two miles in length, delivered at Iron Ridge station as soon as the same shall be graded and prepared for the rails, and said rails are to be replaced by said party of the second part as soon as the rolling mill now in contemplation of being erected by said party of the second part shall be in successful operation, not exceeding two years from the time the same are laid: And in further consideration of the use of said branch railroad, said party of the first part agrees to keep the same in repair so long as it shall continue to use the same under and by virtue of this contract. And further, said party of the first part agrees that the laboring men in the employ of the party of the second part may

pass over the road to and from Iron Ridge and Milwaukee when going to or returning from employment at the Iron mines aforesaid,
on the trains of ore cars free of charge, on request of an officer
424 or agent of said party of the second part. It is further understood and agreed that the accounts for freight shall be settled monthly, up to the close of the month, and paid by said party of the second part on or before the tenth day of the succeeding month.

Said party of the second part, in consideration of the foregoing stipulation, agrees to pay the compensation aforesaid for the services stipulated, and load the cars furnished for that purpose by said party of the first part, with the articles herein mentioned to be transported, and unload the same at the point of delivery, and for such purpose will not detain said cars an unreasonable time, but will perform the necessary labor within a reasonable and proper time; and further, said party of the second part will, on or before the fifth day of each month, notify the party of the first part what amount of ore will be required to be transported during said month, and when such notice is given, the minimum quantity to be carried from Iron Ridge to Milwaukee shall be twenty-five hundred tons in said month, and the maximum all that can be carried without depriving the public of the facilities required for the transportation of the country; and the said party of the first part agrees to transport the amount so notified within said month, and when begun, the work to be continued on consecutive days regularly, if practicable, until finished, and to be done in such part of the month as may best suit the convenience of the party of the first part; but if such notice should not be given, then no amount shall be transported or paid for in the month when such notice is omitted.

In case the party of the second part shall require to have ore transported previous to the completion of said branch road, said party of the first part agrees to carry and deliver the same from and to Iron Ridge station and Milwaukee on the same terms as above mentioned for doing the same service from and to the mines and Milwaukee.

This contract is to be and continue in force for the term of
425 five years from the first day of July next after date hereof, and to be then renewable on fair terms for such further time as may be agreed upon by the parties then in interest, under and through the parties hereto.

Provided, however, that if by the decision of the courts having jurisdiction of the cases now pending, said party of the first part should be dispossessed of the said railroad now in its possession, no damage shall in such case accrue against said party of the first on account of the non-performance of this contract on its part, after such decision shall be made unless reinstated in the possession of said road.

In testimony whereof said corporations have caused these presents to be signed by their respective officers above named, and the corpo-

rate seals of each to be hereto affixed on the nineteenth day of March, A. D. 1864.

Sweedes Iron Company,
[SEAL.] By D. A. BENJAMIN,
*Treasurer.*

Attest: H. COWLES, *Sec'y.*

Milwaukee and St. Paul Railway Co.,
[SEAL.] By EDWIN H. GOODRICH,
*Gen'l Manager.*

Attest: A. CARY, *Sec'y.*

[5 ct. stamp.]

426 *Exhibit U U.*

Testified to by E. H. Goodrich.

H. L. PALMER.

Statement showing the manner of payments for rolling stock by the La Crosse and Milwaukee Railroad Company.

| | | |
|---|---|---|
| In cash | | $293,368 16 |
| In capital stock | $189,000 00 | |
| Discount | 17,960 00 | |
| | | 171,040 00 |
| In Bonds | 84,300 00 | |
| Discount | 7,340 00 | |
| | | 76,960 00 |
| | | 541,368 16 |

MILWAUKEE AND ST. PAUL RAILWAY,
*Auditor's Office, Milwaukee, Wis., Sept.* 15, 1864.

*Exhibit V V.*

Testified to by E. H. Goodrich.

H. L. PALMER.

Statement of earnings of eastern division from August 20th, 1864, to August 31st, 1864, (incl.,) and from September 1st to Sept. 10th, 1864, (incl.)

| | | |
|---|---|---|
| Freight during the ten (10) days of August | $17,095 60 | $1,709 56 per day. |

| | | | |
|---|---|---|---|
| Passengers during the ten (10) days of August | $18,205 06 | $1,820 50 per day: | |
| | | | 3,530 06 |
| Freght during the ten (10) days of September | 13,550 10 | $1,355 01 | |
| Passengers during the ten (10) days of September | 12,196 05 | 1,219 60 | |
| | | | 2,574 61 |

427 *Exhibit W W.*

Testified by Hans Crocker.

H. L PALMER.

Statement of earnings of eastern division of the L. C. and M. R. R., from Milwaukee to Portage, from August 20, 1864, to August 31, 1864, inclusive, and from 1st September to 10 September, 1864, incl.

| | |
|---|---|
| Freight during last 10 days of Aug., (rate of $1,709 50 per day) | $17,095 60 |
| Passenger, same time, (rate of $1,820 50 per day) | 18,205 06 |
| Freight 10 days September, (rate $1,355 01 per day) | 13.550 10 |
| Passenger, same time, (rate $1,219 60 per day) | 12,196 05 |

428 *Exhibit Y Y, 3d head.*

Description of premises in marshal's deed, and in deed from purchasers to Milwaukee and St. Paul Railway Company:

"All and singular, the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company, under and by virtue of an act of Congress of the United States, entitled an act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State, approved June 3, A. D. 1856, and under or by virtue of an act of the legislature of the State of Wisconsin, approved Oct. 11, A. D. 1856, entitled an act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress, entitled an act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State, approved June 3, A. D. 1856, so far as the said lands pertain or are applicable to the construction of said road from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of land. together with all the hereditaments and appurtenances thereof and thereunto belonging, or in anywise appertaining; and also all and singular the several tracts, pieces, or parcels of land which constitute the site of the roadway, turn-outs, engine-houses, workshops, depots, and other

buildings, and all the other lands and real estate which constitute a part of the roads of said railway company from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on, or pertaining to, said roads; and also all and singular the locomotive engines and other rolling stock, and all the other equipments, of every kind and description, which have been procured for said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property, which have been procured for, or used in connection with said roads, or either of them, and also all and singular the rights, liberties, privi-
429 liges, and franchises of said La Crosse and Milwaukee Railroad Company, of every kind and description, relating to said roads, (of said rolling stock forty box cars, numbered respectively, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408,) and such proportion and share of rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenues of the portion of the road conveyed by the mortgage upon which said decree was entered bears to the balance or other end of the road, is hereby conveyed free and clear of all lien or encumbrance; but all the remainder of the above-mentioned rolling stock is conveyed, subject to the lien of mortgages prior in date to the mortgage above mentioned given by said La Crosse and Milwaukee Railroad Company, together with the tolls, rents, and income to be had or levied therefrom, and all corporate and other rights, franchises, and privileges of the said company of, in, and to, or concerning the same; being all the property described in the mortgage upon which said decree was entered, and all and singular the privileges, hereditaments, and appurtenances to the same belonging, or in any way appertaining.

430 *Exhibit I I I.*

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE Railroad Company and others.

Hearing before H. L. Palmer, esq., auditor.

Account made and presented before the said auditor by the Milwaukee & Minnesota Railroad Company, one of the defendants in this cause, based upon the exhibits and testimony before the auditor.

This account is made out, covering the whole term from appointment of the receiver to March 1st, 1865, upon the theory that the receiver is responsible for the administration of the directors of the Milwaukee and St. Paul Railway Company, and the said directors of said company are to be regarded as his agents.

*Exhibit I I I*—Continued.

| 431 Hans Crocker, receiver, | Dr. |
|---|---|
| To amount of gross receipts arising from the operation of the eastern division from June 11th, 1860, to June 13th, 1863, as per account "D," before auditor | $2,130,748 23 |
| To gross earnings of eastern division, from June 13th, 1863, to and including February 28th, 1865, as per Exhibit "E," and continuation of "E," before auditor. | 1,273,113 32 |
| To use of engines belonging to the eastern division, on the western division, (as receiver of western division,) from June 11th, 1860, to June 13th, 1863, 739,747 miles, as per Exhibit "C," 17 cents per mile, being the average value of such use during said period, as per testimony of Mr. Goodrich before auditor | 125,756 99 |
| To mileage of other rolling stock on western division for the same period, declared by Mr. Goodrich in his testimony before the auditor, April 28th, 1865, to be equal in value to the use of engines | 125,756 99 |
| To mileage of rolling stock on the western division, from June 13th, 1863, to June 30th, 1864, at rates fixed by E. H. Goodrich, as per Exhibit "K K," before the auditor | 160,948 18 |
| To mileage of rolling stock on the western division, from June 30th, 1864, to September 1st, 1864, being two months not included in the last item, which is only brought down to June 30th, in the Exhibit marked "K K," and is now continued to September 1st, 1864, as per statement filed by Mr Goodrich before the auditor, and marked Exhibit Y Y Y | 30,941 05 |
| To use of rolling stock on the Milwaukee & St Paul company's entire line of road, from September 1st, 1864, to February 28th, 1865. On the 1st September, 1864, the Milwaukee & St. Paul Company opened their new road for trains, by way of their Watertown extension, and took off all of the rolling stock from the eastern division | |

| 432 Hans Crocker, receiver. | Cr. |
|---|---|
| By expenses from June 11th, 1860, to June 13th, 1863. | $412,373 34 |
| By other expenditures, same time | 723,601 93 |
| By cost of mileage, same time, as per Exhibit "D" | 670,820 01 |
| By amount of order of court in Howard case | 1,000 00 |
| By amount of rolling stock, purchased by the receiver, as per "Exhibit C" | 191,722 87 |
| By the following items, being the credits since June 13th, 1863, the day on which the St. Paul Company took possession of the eastern division, as shown in Exhibit "E," and continuation of "E," viz: | |
| By repairs of track, eastern division | 187,477 73 |
| repairs of bridges, eastern division | 8,567 06 |
| repairs of fences, eastern division | 591 89 |
| repairs of buildings, eastern division | 14,250 44 |
| repairs of locomotives, eastern division | 19,003 15 |
| repairs of cars, eastern division | 36,271 07 |
| management, &c | 16,861 78 |
| foreign agencies | 9,306 43 |
| station services | 73,171 07 |
| printing and advertising | 7,820 90 |
| conductors, baggagemen, and brakemen | 44,153 51 |
| train and station supplies | 10,419 95 |
| engineers, firemen, and wipers | 67,220 36 |
| oil and waste | 25,883 71 |
| fuel | 55,992 74 |
| loss and damage | 2,200 43 |
| personal injuries | 480 88 |
| car service | 4,760 77 |
| miscellaneous | 2,569 02 |
| telegraph | 740 98 |
| passenger earnings refunded | 1,365 92 |
| freight earnings refunded | 5,649 68 |
| mail earnings refunded | 96 19 |

to operate their said new road, and have so continued to use it. The eastern division, to which all the rolling stock, except forty box cars, belongs, now charges for the use of their rolling stock, being six months on their entire road, as per statement of mileage and rates filed by Mr. Goodrich with the auditor, and marked Exhibit Z Z Z ..... 111,839 69

To rent of repair shops on the eastern division, from June 13th, 1863, to February 28th, 1865; value of the same fixed by Mr. Goodrich in his testimony before the auditor ..... 8,541 66

To freight of 1,300 tons iron carried free for St. Paul company from Milwaukee to Portage, as per testimony of Mr. Goodrich ..... 1,625 00

To freight of 36 car loads of ties, carried free for St. Paul company, from Milwaukee to Portage, as per testimony of Mr. Goodrich ..... 360 00

To deficiency on business done for the Horicon road. The lowest rates established for doing this business prior to June 13th, 1863, was 50 per cent., as the eastern division was only allowed 30 per cent. during a period of very high cost for labor and materials, from the St. Paul company, controlling the eastern division, and thus making both sides of a bargain in their own favor; the eastern division now charges the difference, viz: at 50 per cent. the eastern division would have received ..... $76,133 55

At 30 per cent. it received ..... 45,680 15

Deficiency charged ..... 30,453 40

Amount carried over .....

433

Amount brought forward .....

To interest on average balance of cash in your hands as shown by returns of your bank account, filed with auditor, and and marked Exhibit O O O' ..... 16,039 25

To amount of supplies in the repair shops on the eastern division on the 13th June, 1863, when the St. Paul company took possession of said eastern division, and which were not credited to the eastern division in any

| | | |
|---|---|---|
| rents ..... | | 82 67 |
| U. S. revenue tax ..... | | 14,886 23 |
| renewal of track ..... | | 115,423 45 |
| animals killed ..... | | 1,377 00 |
| rent of track ..... | | 40 00 |
| furniture ..... | | 983 31 |
| fencing ..... | | 1,392 36 |
| State taxes ..... | | 30,443 64 |
| legal expenses ..... | | 6,629 23 |
| New York office expenses ..... | | 2,007 05 |
| right of way ..... | | 190 00 |
| purchase of rails ..... | | 23,232 00 |
| locomotive service ..... | | 1,732 00 |
| interest and exchange ..... | | 83 16 |
| H. Crocker, receiver ..... | | 764 10 |
| salary as receiver of the whole road, from June 11th, 1860, to June 13th, 1863, or three years, being, at $5,000 per year, $15,000, and charging one-half of this sum to the eastern division, is ..... | | 7,500 00 |
| salary as receiver of the eastern division, from June 13th, 1863, to February 28th, 1865, though the services performed were merely nominal, the St. Paul company being in the possession of the eastern division, at same rate of $5,000 per year, is for said period of 1 year, 8 months, and 17 days ..... | | 8,582 92 |
| Amount carried over ..... | | |

434

Amount carried forward .....

By repairs of rolling stock, as made by the Milwaukee & St. Paul Paul Railroad Company, from June 13th, 1863, to June 30th, 1864, as per statement filed by Mr. Goodrich for the Milwaukee & St. Paul Railway Company, with the auditor, and marked Exhibit M M, amounting to ..... 139,638 03

*Exhibit I I I.*—Continued.

| Hans Crocker, receiver, | Dr. | | Hans Crocker, receiver, | | Cr. |
|---|---|---|---|---|---|
| way, but have been used by the St. Paul company in repairing the rolling stock, and as the eastern division has now credited in this account the whole amount of repairs of the rolling stock, it now charges the amount of the said supplies, as per statement filed with the auditor and marked Exhibit No. 7 | | $87,147 40 | Less amount charged to the eastern division, as per Exhibit E | $28,423 99 | |
| To value of 13,903 cords of wood on eastern division, on June 13th, 1863, when the St. Paul company took possession at $2 50 per cord; see Exhibit No. 7, showing this amount of wood to have been on the eastern division, and see also Goodrich's testimony that the eastern division has been charged by the St. Paul company, ever since they have had possession, for all the wood used on it, to the amount as shown under item, "fuel, $55,992 74," in Exhibit E and continuation of E; the eastern division is therefore entitled to a credit for the amount found on it when it was taken by the St. Paul company | | 34,757 50 | | | $111,214 04 |
| | | 4,138,028 60 | By repairs of rolling stock, from June 30th, 1864, to September 1st, 1865, as made by the Milwaukee & St. Paul Railway Company, being 2 months, as per Exhibit No. 3, filed with the auditor; the whole amount charged to the western division for that time was $30,133 11-100, of which sum the Milwaukee & Minnesota Railroad Company assumes as its proportion 924-1000, amounting to | | 27,842 99 |
| | | | By repairs of rolling stock, as made by the Milwaukee & St. Paul Railway Company, from September 1st, 1864, to March 1st, 1865, as per Exhibit No. 2, filed with the auditor, amounting to $178,687 52. The Milwaukee & Minnesota Railroad Company assumes as its proportion of said sum 62 per cent, amounting to | | 110,786 26 |
| | | | | | 3,059,656 22 |
| To balance due Milwaukee & Minnesota Railroad Company, | | 1,078,372 38 | Balance due Milwaukee & Minnesota Railroad Company | | 1,078,372 38 |
| | | | | | 4,138,028 60 |

Account made and presented before said auditor by the Milwaukee & Minnesota Railroad Company, one of the defendants in this cause, based upon the exhibits and testimony before the auditor, and embracing a portion of the account filed with the auditor, and marked Exhibit J J J, for which it is claimed that the Milwaukee & St. Paul Railway Company, or rather Russell Sage, Alexander Mitchell, and others, calling themselves the Milwaukee & St. Paul Railway Company, are liable as agents and receivers under the receiver, or what they are liable for, if they are to be treated as receivers distinct from Crocker, being formed from certain items in Exhibit E and continuation of E, objected to by the Milwaukee & Minnesota Railroad Company, which that company claims as credits, and certain other charges which the Milwaukee & Minnesota Railroad Company claims to have the right to make against the directors of the Milwaukee & St. Paul Railway Company.

| 436 Directors of Milwaukee & St. Paul R'y Co., | Dr. |
|---|---|
| To use of rolling stock, from June 13th, 1863, to September 1st, 1864, being the amount charged by the St. Paul company to the eastern division for the use of stock on eastern division, (95 miles,) in accounts filed with the auditor by the St. Paul co., and marked Exhibit E and continuation of E | $202,311 16 |
| To balance of cash due the eastern division, March 1st, 1865, as per accounts filed with the auditor by the St. Paul company, and marked Exhibit E, and continuation of E, showing the amount in their hands belonging to the eastern division at that date | 108,920 81 |
| To use of rolling stock on western division from June 13th, 1863, to June 30th, 1864, from a statement of the mileage and rates proper to be charged for it, filed by Goodrich for the St. Paul company, with the auditor, and marked Exhibit K K | 160,948 14 |
| To use of rolling stock on the Milwaukee & St. Paul Company's entire line of road from La Crosse to Milwaukee, by way of their new Watertown extension, being some 200 miles. This item commences on the 1st of September, 1864, when the Watertown branch was first opened for trains, and where the item of "Use of rolling stock, $202,311 16," ends; said items in Exhibit E and its continuation being only brought down to September 1st, 1864, when the St. Paul company ceased to charge the eastern division for the use of rolling stock, having on that day taken | |

| 437 Directors of Milwaukee & St. Paul R'y Co., | | Cr. |
|---|---|---|
| By repairs of rolling stock made by the Milwaukee and St. Paul company, from June 13th, 1863, to June 30th, 1864, as per statement filed by Goodrich for the St. Paul company, with the auditor, and marked Exhibit M M | $139,638 03 | |
| Less amount charged to the eastern division, as per Exhibit E | 28,423 99 | $111,214 04 |
| By repairs of rolling stock, from June 30th, 1864, to September 1st, 1864. The whole amount charged to the western division for the said two months being, as per Exhibit No. 3, filed with the auditor, $30,133 11, of which sum the Milwaukee & Minnesota Company assumes as its proportion 924-1000, or | | 27,842 99 |
| By repairs of rolling stock by the Milwaukee & St. Paul Company, from September 1st, 1864, to March 1st, 1865, as per Exhibit No. 2, filed with the auditor, amounting to $178,687 52, the Milwaukee & Minnesota Company assumes as its proportion of said sum 62 per cent., amounting to | | 110,786 26 |

*Exhibit J J J*—Continued.

| Directors of Milwaukee & St. Paul R'y Co., | Dr. | Directors of Milwaukee & St. Paul R'y Co., | Cr. |
|---|---|---|---|
| it all away from the eastern division, and placed it upon their new Watertown branch. The whole rolling stock was therefore used on the St. Paul company's entire road, to the complete exclusion of the eastern division, to which it belongs. The eastern division now charges the directors of the St. Paul company for the use of it on 200 miles of road, from September 1st, 1864, to March 1st, 1865, as per statement of mileage and rates filed by Goodrich for the St. Paul company, with the auditor, and marked Exhibit Z Z Z..... | $111,839 69 | | |
| To use of rolling stock on western division from June 30th, 1864, to September 1st, 1864, being two months not included in exhibit marked K K, and now brought down to September 1st, 1864, as per Exhibit filed by Goodrich for the St. Paul company and marked Exhibit Y Y Y..... | 30,941 05 | | |
| To use of rolling stock on western division from April 25th, 1863, to May 1st, 1863, inclusive | $2,396 48 | | |
| Same from May 1, 1863, to June 1, 1863, inclusive..... | 11,958 02 | | |
| Same from June 1, 1863, to June 12, 1863, inclusive ..... | 4,672 79 | | |
| Total..... | 19,027 29 | | |
| This sum of $19,027 29 forms part of the item "No 38" in Exhibit E, "Milwaukie & St. Paul Railway Company, $109,950 82," and was the charge made in that account by the St. Paul company for use of rolling stock for the periods above specified, against the eastern division. As the rolling stock belongs to the eastern division, it must be charged back again to the directors of the St. Paul company, who have had this amount wrongfully from the eastern division. See testimony of D. W. Keyes, August 22, 1864..... | 19,027 29 | | |

To rent of repair shops on the eastern division, from June 13th, 1863, to February 28th, 1865, 1 year, 8 months, and 15 days, as per testimony to value of same, by Goodrich..... 8,641 66

To freight of 1,300 tons of iron, carried free for St. Paul company to Portage, as per testimony of Goodrich..... 1,625 00

To freight of 36 car loads of ties, carried free to Portage for St. Paul company, as per testimony of Goodrich..... 360 00

488 To repairs of tools and machinery, from June 13th, 1863, to February 28th, 1865. Exhibit E and continuation of E. 15,993 19

To deficiency of business on the Horicon road, as set forth in the account with H. Crocker, receiver..... 30,463 66

To new buildings, as shown in Exhibit E and continuation of E, filed by the St. Paul company with the auditor, being the amount expended by them in extending the repair shops on the eastern division, and other buildings, for doing which, as the testimony shows, they had no authority from the court, and as the Supreme Court has decided them to have had no legal possession of the eastern division, cannot be charged to that division. The enormity of this charge is further shown in the fact that the St. Paul company had already, during the same period, charged the eastern division for "repairs of buildings" in Exhibit E a sum of $14,250 54, making the account for buildings in 24 months $48,804 91, viz:

| | | |
|---|---|---|
| Repairs of buildings | $14,250 44 | |
| Repairs of new buildings | 34,554 47 | |
| | 48,804 91 | |

We therefore claim that we should not be charged for buildings we did not want, made without any order of court, by a party illegally in possession of our property, a sum of... 34,554 47

To amount supplies in the repair shops on the eastern division on the 13th June, 1863, as per inventory filed in the case by order of court, June 10th, 1863, and now before the auditor, marked Exhibit No. 7..... 87,147 34

Amount carried over..... $249,843 29

*Exhibit J J J*—Continued.

| Directors of Milwaukee & St. Paul R'y Co., | Dr. | Directors of Milwaukee & St. Paul R'y Co., | Cr. |
|---|---|---|---|
| it all away from the eastern division, and placed it upon their new Watertown branch. The whole rolling stock was therefore used on the St. Paul company's entire road, to the complete exclusion of the eastern division, to which it belongs. The eastern division now charges the directors of the St. Paul company for the use of it on 200 miles of road, from September 1st, 1864, to March 1st, 1865, as per statement of mileage and rates filed by Goodrich for the St. Paul company, with the auditor, and marked Exhibit Z Z Z..... | $111,839 69 | | |
| To use of rolling stock on western division from June 30th, 1864, to September 1st, 1864, being two months not included in exhibit marked K K, and now brought down to September 1st, 1864, as per Exhibit filed by Goodrich for the St. Paul company and marked Exhibit Y Y Y..... | 30,941 05 | | |
| To use of rolling stock on western division from April 25th, 1863, to May 1st, 1863, inclusive | $2,396 48 | | |
| Same from May 1, 1863, to June 1, 1863, inclusive..... | 11,958 02 | | |
| Same from June 1, 1863, to June 12, 1863, inclusive ..... | 4,672 79 | | |
| Total..... | 19,027 29 | | |
| This sum of $19,027 29 forms part of the item "No 38" in Exhited E, "Milwaukie & St. Paul Railway Company, $109,950 82," and was the charge made in that account by the St. Paul company for use of rolling stock for the periods above specified, against the eastern division. As the rolling stock belongs to the eastern division, it must be charged back again to the directors of the St. Paul company, who have had this amount wrongfully from the eastern division. See testimony of D. W. Keyes, August 22, 1864..... | 19,027 29 | | |

To rent of repair shops on the eastern division, from June 13th, 1863, to February 28th, 1865, 1 year, 8 months, and 15 days, as per testimony to value of same, by Goodrich..... 8,541 66

To freight of 1,300 tons of iron, carried free for St. Paul company to Portage, as per testimony of Goodrich..... 1,625 00

To freight of 36 car loads of ties, carried free to Portage for St. Paul company, as per testimony of Goodrich..... 360 00

438 To repairs of tools and machinery, from June 13th, 1863, to February 28th, 1865. Exhibit E and continuation of E. 15,993 19

To deficiency of business on the Horicon road, as set forth in the account with H. Crocker, receiver..... 30,453 66

To new buildings, as shown in Exhibit E and continuation of E, filed by the St. Paul company with the auditor, being the amount expended by them in extending the repair shops on the eastern division, and other buildings, for doing which, as the testimony shows, they had no authority from the court, and as the Supreme Court has decided them to have had no legal possession of the eastern division, cannot be charged to that division. The enormity of this charge is further shown in the fact that the St. Paul company had already, during the same period, charged the eastern division for "repairs of buildings" in Exhibit E a sum of $14,250 54, making the account for buildings in 24 months $48,804 91, viz:

| | | |
|---|---|---|
| Repairs of buildings..... | $14,250 44 | |
| Repairs of new buildings..... | 34,554 47 | |
| | 48,804 91 | |

We therefore claim that we should not be charged for buildings we did not want, made without any order of court, by a party illegally in possession of our property, a sum of... 34,554 47

To amount supplies in the repair shops on the eastern division on the 13th June, 1863, as per inventory filed in the case by order of court, June 10th, 1863, and now before the auditor, marked Exhibit No. 7..... 87,147 34

Amount carried over..... $249,843 29

Exhibit J-J-J—Continued

| Directors of Milwaukee and St. Paul R'y Co. | Dr. |
|---|---|
| To value of 13,003 cords of wood, June 13th, 1893, when the St. Paul company took possession of eastern division, said wood being at that date on the eastern division, as per inventory filed in the case, by order of court, June 16th, 1893, and now before the auditor, marked Exhibit No. 7, 13,003 cords, at $3.50 per cord | $[illegible] |
| | [illegible] |
| To balance due the Milwaukee and Minnesota Railroad Company by the directors of the Milwaukee and St. Paul Railroad Company | [illegible] |

| 188 Directors of Milwaukee and St. Paul R'y Co. | Dr. |
|---|---|
| Amount brought forward | [illegible] |
| Balance due Milwaukee and Minnesota R. R. | [illegible] |
| | [illegible] |

440 Circuit court United States, district of Wisconsin, in equity.

James T. Soutter, survivor, &c.
vs.
The La Crosse and Milwaukee R. R. Company et als.

The Milwaukee and Minnesota Railroad Company takes special exception to the following items of account, marked Exhibit C. before the auditor, viz:

| | |
|---|---|
| 1. Cleveland judgment | $73,802 82 |
| 2. New buildings | 10,577 88 |

And upon account marked Exhibit E. before the auditor, excepts to the items—

| | |
|---|---|
| 3. No. 7. Repair tools and machinery | $6,178 83 |
| 4. No. 28. New buildings | 27,497 84 |
| 5. No. 38. Mil. & St. Paul Co | 109,460 82 |
| 6. No. 39. Use of rolling stock | 166,242 70 |

By MATT. H. CARPENTER,
*Solicitor.*

*Exhibit X X X.*

Presented by Mr. Carpenter.

H. L. PALMER, *Auditor.*

This exception is made upon the understanding by me that the payment of the different sums mentioned in items 1, 2 and 4 above mentioned, have been, in fact, made by the rec'r. My exception is to the propriety of such payments, and I object to them being allowed to the receiver upon that ground.

M. H. CARPENTER.

441 *Exhibit Y Y Y.*

Filed April 28, 1865.

H. L. PALMER.

United States of America, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the third day) of January, A. D. 1859.

Present: The Honorable Andrew G. Miller, judge of said court, presiding.

On the twenty-first day of the said term, to wit, on the eleventh day of February, A. D. 1859, the following proceedings were had, to wit:

NEWCOMB CLEVELAND
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, and Selah Chamberlain. } In equity.

This day came the parties by their counsel, and on due consideration of the pleadings, proofs, and arguments of counsel, it is thereupon ordered, adjudged, and decreed by the court that the article of agreement between the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, bearing date the twenty-sixth day of September, eighteen hundred and fifty-seven, whereby said company sold and assigned to said Chamberlain all its personal property, (except such as is used on the Milwaukee and Watertown division of said railroad,) and leased to said Chamberlain their said railroad and appurtenances, rights, franchises, and privileges, be, and hereby is vacated, annulled, and made void, so that the same shall not hereafter be of any force or effect whatever.

And that the said Selah Chamberlain be, and hereby is, perpetually enjoined and restrained from using, managing, running, controlling, or meddling with said railroad, or the rolling stock, personal property, or any of its appurtenances or franchises, or anything connected therewith, under or by virtue of said article of agreement.

And it is further ordered, adjudged, and decreed by the court that the judgment of the said Selah Chamberlain against the La Crosse and Milwaukee Railroad Company, entered in this court on
442 the second day of October, eighteen hundred and fifty-seven, for the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents, and all executions and proceedings thereon be, and hereby are, vacated, annulled, made void, and set aside, so that the same shall have no further effect whatever.

And it is further ordered, adjudged, and decreed by the court that the said defendant, Selah Chamberlain, pay the costs to be taxed, so far as they accrued in this proceeding against him; and that he pay the same within twenty days, or in default thereof an execution be issued against him for the same.

And as the lease and assignment of the said company to D. C. Freeman has expired by its own limitation, it is further ordered, adjudged, and decreed by the court that the defendant, D. C. Freeman, pay the costs to be taxed, so far as they accrued in this proceeding against him, within twenty days, or in default thereof an execution be issued against him for the same.

And it is further ordered, adjudged, and decreed by the court that the La Crosse and Milwaukee Railroad Company pay the costs to be taxed, so far as they accrued in this proceeding against it, within twenty days, or in default thereof an execution to be issued against it for the same.

And it is further ordered that reference be, and hereby is, made

to a master of this court to ascertain and report the annual income of the several lots described in the bill as having been conveyed to Moses Kneeland and James Ludington, from the time of their said purchase, together with a statement of the interest thereon. And also to ascertain and report the amount of the actual cost of permanent improvements made on said lots by said Kneeland and Ludington, together with interest thereon; and also the amount of liens and taxes on said lots that have been paid by said Kneeland and Ludington, or by C. D. Nash for them, together with interest on the same. And that this bill be retained for further decree and proceedings after the coming in of said report.

It is ordered by the court that, in case of appeal by the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, or either of them, a bond to authorize a supersedeas shall be given, and filed, with sufficient sureties, to be approved by the court or judge, in the penal sum of one hundred and fifty thousand dollars.

A. G. MILLER.

443 *Exhibit Y Y Y.*

Filed May 6th, 1865.

H. L. PALMER.

Statement mileage of rolling stock on western division July 1st, 1864, to Sept. 1, 1864.

| | |
|---|---|
| Locomotives, July 1st. '64, to Sept'r 1st, 1864 | $74,650 |
| Passenger cars, July 1st, '64, to Sept'r 1st, 1864 | 79,242 |
| Baggage, mail, and express, July 1st, '64, to Sept'r 1st, 1864 | 46,499 |
| Freight, July 1st, '64, to Sept'r 1st, 1864 | 380,762 |
| | 581,153 |

*Exhibit Z Z Z.*

Filed May 6, 1865.

H. L. PALMER.

Statement mileage of rolling stock on the Milwaukee and St. Paul railway, September 1, 1864, to March 1, 1865.

| | |
|---|---|
| Locomotives, Sept. 1st, '64, to March 1st, '65 | $434,577 |
| Passenger cars, Sept. 1st, '64, to March 1st, '65 | 465,933 |
| Baggage, mail, and express, Sept. 1st, '64, to March 1st, '65 | 230,172 |
| Freight, Sept. 1st, '64, to March 1st, '65 | 1,514,469 |
| | 2,645,151 |

444 *Exhibit No. 1.*

Filed May 6th, 1865.

H. L. PALMER.

Statement showing total cost of repairs of rolling stock, eastern and western divisions, June 30th, '64, to Sept. 1st, 1864; Milwaukee & St. Paul R'y, and eastern division, Sept. 1st, '64, to Mar. 1st, 1865.

| | |
|---|---|
| Repairs main line, June 30 to Sept. 1, '64 | $37,095 63 |
| Repairs Mil. & St. Paul railway, including eastern division L. M. R. R'd, Sept. 1, 1864, to Mar. 1, 1865 | 198,575 23 |
| Total cost of repairs | 235,670 86 |
| Deduct amount charged eastern div'n, as their prop'n of the above, June 30, '64, to March 1st, 1865 | 26,850 23 |
| | 208,820 63 |

*Exhibit No. 2.*

Filed May 6, 1865.

H. L. PALMER.

Statement cost of repairs rolling stock, Milwaukee and St. Paul railway, from Sept'r 1st, 1864, to March 1st, 1865.

| | |
|---|---|
| Total cash, Sept'r 1st, 1864, to March 1st, 1865 | $178,687 52 |

*Exhibit No. 3.*

Filed May 6, 1865.

H. L. PALMER.

Statement cost of repairs rolling stock, charged western division Mil. & St. P. R'y, June 30th, 1864, to Sept. 1st, 1864.

| | |
|---|---|
| Total cash, June 30th, 1864, to Sept'r 1st, 1864 | $30,133 11 |

445 *Exhibit No. 7.*

Filed May 7th, 1865.

H. L. PALMER.

| | |
|---|---|
| 4,238 lbs. shafting, hangers, and pulleys | $529 75 |
| 1 wood turning lathe and centre shaft | 90 00 |
| 1 morticing machine | 12 00 |
| 2 drills | 210 00 |
| 1 wood planer | 575 00 |
| 2 splitting saws, table complete | 40 00 |
| 1 tenon saw, table complete | 30 00 |
| 1 upright saw, table complete | 120 00 |
| 1 irregular cutter | 125 00 |
| 2 boring machines | 176 00 |

| | | |
|---|---|---|
| 1 | bolt cutter | $265 00 |
| 29 | hammers, 16 s | 58 00 |
| 8 | iron vices | 96 00 |
| 25 | jack screws, $12 | 300 00 |
| 57 | screw wrenches, 12 s | 85 50 |
| 5 | sledges, $2 | 10 00 |
| 2 | hand saws, $2 | 4 00 |
| 27 | cold chisels 4 s | 13 50 |
| 3 | screw plates, $6 | 18 00 |
| 3 | ratchet drills, $6 | 18 00 |
| 2 | grindstones | 15 00 |
| 23 | carpenter benches, $5 | 115 00 |
| 23 | bench screws, 10 s | 28 75 |
| 4 | car-smith benches, $3 | 12 00 |
| | Amount carried fow'd | 395,384 50 |

| | | |
|---|---|---|
| 446 | Amount brought fow'd | $395,384 50 |
| 1 | copying press | 10 00 |
| 1 | platform scale | 35 00 |
| 4 | cupboards | 35 00 |
| 3 | desks | 45 00 |
| 1 | table | 5 00 |
| 4 | chairs | 7 00 |
| 1 | clock | 20 00 |
| 15 | stoves and pipe complete | 355 00 |
| | Wrecking tools | 495 00 |
| 246 | 1-2 galls. Smith's wearing body varnish, $3 80. | 936 70 |
| 101 | 1-2 galls. Smith's hard body varnish, $3 60 | 304 50 |
| 28 | 3-4 galls. pol. ex. light, $3 | 86 25 |
| 1 | 1-2 galls. locomotive varnish, $425 | 6 37 |
| 36 | galls. asphaltum varnish, $1 40 | 50 40 |
| 5 | galls. (N. & H.) English varnish, $5 75 | 28 75 |
| 1 | 66-100 galls. Smith's U. J. varnish, $5 40 | 8 96 |
| 6 | galls. Damar varnish, $4 70 | 28 20 |
| 17 | 1-4 galls. Japan dryer, $1 45 | 25 01 |
| 126 | lbs. chrome green, (x) 17 c | 21 42 |
| 23 | do do (x D) 17 c | 3 91 |
| 2 | cans, 6 lbs. each, scar't vermilion, (12) 2 s | 3 00 |
| 159 | lbs. chrome yellow, 17 c | 27 03 |
| 4 | 1-2 lbs. Prussian blue, 8 s | 4 50 |
| 1 | 4-12 doz. fitches, 6 s | 1 00 |
| 190 | galls. of Grant's pat. roofing cement, 10 s | 237 50 |
| 477 | galls. linseed oil, $1 85 | 882 45 |
| 90 | lbs. Indian red, 16 c | 14 40 |
| 1,350 | lbs. horicon paint, dry, 2½ c | 33 70 |
| 10 | lbs. drop black, 2 s | 2 50 |
| 104 | lbs. English vermilion, $1 25 | 130 00 |
| 31 | 3-4 lbs. chatimid drop lake, 85 | 26 98 |

| | | |
|---|---|---|
| | 6 lbs. Chinese vermilion, $1 35 | $8 10 |
| | 3 lbs French vermilion, $1 50 | 4 50 |
| | 6 lbs. flake white, 16 | 96 |
| | Amount carried fow'd | 399,268 59 |
| 447 | Amount brought forward | $399,268 59 |
| | 1 box white chalk crayon, 4 s | 50 |
| | 12 lbs. French zinc, (dry) 15 | 1 80 |
| | 12 lbs. green flick, 6 s | 9 00 |
| | 25 lbs. white zinc, (in oil) | 2 25 |
| | 50 lbs. b't sienna, 10 | 5 00 |
| | 175 lbs. b't umber, 6½ | 11 38 |
| | 62 lbs. lamp black, 2 s | 15 50 |
| | 100 lbs. red lead, 14 c | 14 00 |
| | 200 lbs. whiting, 2¼ | 40 50 |
| | 300 lbs. yellow ochre, 2½ | 7 50 |
| | 100 lbs. mixed horicon paint, 8 c | 8 00 |
| | 8 lbs. Van Dyke brown, 1 s | 1 00 |
| | 60 lights glass 8x10 Am., 2½ | 1 50 |
| | 30 ....do....10x14 Am., 4½ | 1 35 |
| | 58 ....do....10x12 Am., 4 | 2 32 |
| | 177 ....do.... 9x12 Am., 3 1-5 | 5 66 |
| | 80 ....do.... 9x14 Am., 4 | 3 20 |
| | 27 ....do....12x20 Am., 10 | 2 70 |
| | 27 ....do....24x20 surf. F., 24 | 6 48 |
| | 16 ....do....20x26 D. F., 91 | 14 56 |
| | 10 ....do....18x22 D. F., 83 | 8 30 |
| | 7 ....do....24x28 D. F., $1 55 | 10 85 |
| | 20 ....do....14x22 D. F., 62½ | 12 50 |
| | 11 ....do....10x15 D. F., S. Amr., 5 | 55 |
| | 1 box 50 ft. 12x18 S. Amr., $4 25 | 4 25 |
| | 1 ....do.... 9x12 S. Amr., $3 50 | 3 50 |
| | 1 ....do....10x16 S. Amr.,$4 | 4 00 |
| | 1 ....do....18x24 D. F'r | 15 00 |
| | 10-20 pack. gold leaf, $13 | 6 50 |
| | 12 papers bronze | 8 00 |
| | 12 gold bronze | 17 00 |
| | 15 lbs. orange mineral, 15 c | 2 25 |
| | 100 lbs. litharge, 14 | 14 00 |
| | 1 gal. Stinson, Valentine & Co. nonpariel varn'h. | 4 50 |
| | Amount carried fow'd | 399,497 99 |
| 448 | Amount brought forward | $399,497 99 |
| | 3 kegs P. & W. pure white lead, 311, 311, 311=933, 8½ | 79 30 |
| | 230 lbs. (Cleveland) pure white lead, 12 c | 27 60 |
| | 270 lbs. mixed paints, 18 | 48 60 |

| | | |
|---|---|---|
| 2 lbs. drop lake, $3 50 | | $7 00 |
| ½ gall. turp't, $4 25 | | 2 13 |
| 4 doz. tubes of colors, 12 s | | 6 00 |
| 1 doz. tube carmine, 8 s | | 1 00 |
| ½ doz. tube lake, $6 | | 3 00 |
| 200 doz. Eng. white lead, (doz.) 9½ | | 19 00 |
| 8 1-4 galls. benzole, 45 | | 3 71 |
| 2 blenders, 12 s | | 3 00 |
| 2 blenders, $3 50 | | 7 00 |
| 8 00 brass bound paint brushes | | 7 60 |
| 4 0000 brass bound paint brushes | | 5 00 |
| 6 000 brass bound paint brushes | | 6 75 |
| 9 000–000 wire bound paint brushes | | 8 25 |
| 2 0000 wire bound paint brushes | | 2 00 |
| 23 00 common varnish brushes,<br>3 00 extra varnish brushes,<br>8 000 common varnish brushes, } 6 s | | 25 50 |
| 16 No. 8 sash tools, $4 per doz | | 5 33 |
| 2 No. 5 sash tools, 2 s | | 50 |
| 18 No. 2 flat hair brushes | | 3 00 |
| 12 No. 1 ……do | | 1 25 |
| 1 doz. black sable stripers | | 4 50 |
| 2 4-12 doz. black sable stripers, $2 40 | | 5 60 |
| 4 doz. C. H. fine line, 60 c | | 2 40 |
| 10 doz. C. H. Sevan quill stripers, 36 c | | 3 60 |
| 16 8-12 doz. assorted stripers | | 10 00 |
| 16 C. H. artist brushes | | 3 75 |
| 1 doz. dusters | | 8 00 |
| ½ doz. varnish brushes, (used,) $2 50 | | 1 25 |
| ½ doz. 0000 p't brushes, (used,) $4 50 | | 2 25 |
| 3 chamois skins | | 1 50 |
| Amount carried fow'd | 399,813 | 36 |

| | | | |
|---|---|---|---|
| 449 | Amount brought forward | $399,813 | 36 |
| | 1 doz. French graining combs | 4 | 50 |
| | 3 doz. pt. buckets | 6 | 38 |
| | 7 tin caddies (large) | 49 | 00 |
| | 3 tin caddies (small) | 10 | 50 |
| | 1 marble slab and muller | 5 | 00 |
| | 2 paint mills | 20 | 00 |
| | ½ doz. 5 gall. can | 4 | 50 |
| | 1 diamond | 5 | 00 |
| | 2 whitewash brushes, $3 | 6 | 00 |
| | 3 paint strainers, 3s | 1 | 13 |
| 65,886 | ft. long car sills and plates "Norway pine," $12 | 190 | 36 |
| 86,641 | ft. com. pine plank and board, $9 | 179 | 63 |
| 25,122 | ft. 2d class pine boards, $20 | 1,042 | 54 |
| 61,514 | ft. long oak car timber, $20 | 1,230 | 28 |

| | | |
|---|---|---|
| 97,729 ft. long oak car timber, $16 | | $1,562 66 |
| 84,560 ft. long oak plank, $14 | | 1,183 84 |
| 51,520 ft. ash plank, $18 | | 927 36 |
| 11,028 ft. maple timber, $12 | | 132 23 |
| 4,860 ft. maple boards, $12 | | 58 32 |
| 9,067 ft. white wood boards, $18 | | 163 51 |
| 483 ft. hickory plank, $18 | | 8 71 |
| 320 ft. bass wood boards, $8 | | 2 56 |
| 2,180 ft. cherry boards, $20 | | 63 60 |
| 5,026 ft. butternut boards, $12 | | 60 31 |
| 3,314 ft. bl'k walnut plank and boards, $35 | | 115 99 |
| 2,316 ft. 1½ in. hard pine flooring, $15 | | 34 74 |
| 9,032 ft. 2 in matched flooring "com," $18 | | 162 57 |
| 4,500 ft. 1¼ in. matched flooring, $23 | | 103 50 |
| 12,957 ft. planed roofing boards, $17 50 | | 210 26 |
| 5,600 ft. 2d flooring, $23 | | 118 80 |
| 39,045 lbs. cast iron, 3¼c | | 1,268 96 |
| 14,906 lbs. worked wr't iron, 8c | | 1,192 48 |
| 5,251 lbs. draft iron, 1s | | 356 37 |
| 51,181 lbs. old cast iron, 1½c | | 767 71 |
| Amount forw'd | | 412,263 06 |
| 450 Amount brought forw'd | | $412,263 06 |
| 2,417 pass. car steel springs, 1s | | 302 12 |
| 7,251 lbs. wr't bolts and nuts, 10c | | 725 10 |
| 1,507 lbs. brass boxes, 38c | | 572 66 |
| 396 lbs. wr't washers, 1s | | 49 50 |
| 942 lbs. old brass boxes, 20c | | 188 40 |
| 437 lbs. brake chain, 1s | | 52 65 |
| 13 large coupling chains, 863 lbs., 1s | | 112 19 |
| 51 white steel springs, $7 | | 357 00 |
| 628 lbs. rubber springs, 80c | | 502 40 |
| 1 set bolster springs | | 202 50 |
| 5 new hand cars, framed, $10 | | 50 00 |
| 14 new 33 in. car wheels and axles, fitted | | 784 98 |
| 8 new 33 in. car wheels on old axles, fitted | | 194 00 |
| 30 old 33 in. car wheels on old axles, fitted | | 276 00 |
| 138 old 30 in. car wheels on old axles, fitted | | 1,055 70 |
| 28 new 33 in. car wheels, Blanchard & d., $14 50 | | 406 00 |
| 46 new 33 in. car wheels, Richardson & Banner, $17 | | 782 00 |
| 28 new 30 in. car wheels, $13 50 | | 358 00 |
| 31 old 33 in. car wheels, $7 50 | | 222 50 |
| 10 old 30 in. car wheels, $6 75 | | 67 50 |
| 73 old wheels for scrap, 34,540 lbs., 19c | | 518 10 |
| 3 pair rubble car wheels and axles | | 44 86 |
| Labor and material rebuilding 11,812 pass. cars. | | 262 72 |
| 149 yds. drab carpeting, $1 40 | | 209 60 |
| 10¼ yds. carpeting, $1 40 | | 14 70 |
| 6½ yds. carpeting, $1 50 | | 9 75 |

| | | |
|---|---|---|
| | 3 yds. carpenting, $1 | $3 00 |
| | 3 yds. crimson plush, $2 | 6 00 |
| | 11 new crimson plush car seats, $5 50 | 60 50 |
| | 25 old crimson plush car seats, $2 50 | 62 50 |
| | 37 yds. l. duck, 28c | 10 36 |
| | 11 chair cushions, 16s | 22 00 |
| | 37½ yds. narrow rufflí'd repps, $1 80 | 67 50 |
| | 40 yds. mognette, $3 50 | 140 88 |
| | 31⅛ yds. mognette, $5 25 | 162 75 |
| | Amount forw'd | 421,129 68 |
| 451 | Amount brought forw'd | $421,129 68 |
| | 11 yds. green baize, 80c | 8 80 |
| | 15 yds. red flannel, 48c | 7 20 |
| | 37 yds. bed ticking, 20c | 7 40 |
| | 4 yds. canton flannel, 3s | 1 50 |
| | 32 yds. bleached drill, 18c | 5 76 |
| | 20 yds. brown sheeting, 34c | 6 80 |
| | 56 yds. brulaps, 2s | 14 00 |
| | 8¼ yds. green En. cloth, 7s | 7 22 |
| | 60 yds 122 in. duck, $1 98 | 118 80 |
| | 1 head lining | 29 08 |
| | 150 lbs. curled hair, 44c | 66 00 |
| | 200 lbs. old curled hair and moss, 25c | 50 00 |
| | 1 gross plush nails, 10s | 1 25 |
| | 4 gross plush nails, 6s | 3 00 |
| | 45 gross plush buttons, 6s | 33 75 |
| | 8 gross plush buttons, 5s | 5 00 |
| | 8 gross plush nails, 6s | 3 20 |
| | 5 paper lining nails, 2s | 1 25 |
| | 48 glass car lamp globes, 6s | 36 00 |
| | 8 car lamps, $3 75 | 30 00 |
| | 2 car lamps, $3 50 | 7 00 |
| | 5 parafine lamps, 6s | 3 75 |
| | 9 kerosene lamp bottoms, 10s | 11 25 |
| | 3 oil car lamp bottoms, 6s | 2 25 |
| | 6 doz. coil oil burners, $2 75 | 16 50 |
| | 172 parafine lamp chimneys, 10c | 17 20 |
| | 29 bronze bracket lamps, 10s | 36 25 |
| | 31 doz. car lamp chimneys, $1 12 | 34 72 |
| | 11 white hand lanterns, $1 | 11 00 |
| | 7 ruby hand lanterns, $1 50 | 10 50 |
| | 21 10 in. ventilated rings, $1 50 | 31 50 |
| | 32 7 and 8 in. ventilated rings, $1 10 | 32 00 |
| | 5 4 in. ventilated rings, 4s | 2 50 |
| | 108 pair strap hinges 6, 8, 10, 12, in., $1 10 | 118 80 |
| | Amount forw'd | 421,900 91 |

| | | |
|---|---|---|
| 452 | Amount brought forw'd | $421,900 91 |
| | 173 gross iron screws | 100 18 |
| 46 | gross brass cap screws | 152 64 |
| 1 | keg finishing nails | 7 00 |
| 1,310 | lbs. cut nails, 5½c | 98 25 |
| 660 | lbs. clinch nails, 8c | 52 80 |
| 53 | papers brads and clout nails, 1s | 6 62 |
| 15 | papers 5⅛ brads, 4c | 60 |
| 12 | doz. papers gimp tacks, 96c | 11 52 |
| 115 | papers 10 oz. tacks, 8c | 9 20 |
| 72 | papers 6 oz. tacks, 5c | 3 60 |
| 84 | papers 4 oz. tacks, 4c | 3 36 |
| 125 | papers 12 oz. tacks, 9c | 11 25 |
| 120 | papers 8 oz. tacks, 7c | 8 40 |
| 2,156 | papers 18 and 16 oz. tacks, 1s | 269 50 |
| 33 | papers 14 oz. tacks, 8c | 2 64 |
| 1 | paper copper tacks, 15c | 15 |
| 728 | lbs. coach screws, 12c | 87 36 |
| 680 | carriage bolts, ass'td | 28 37 |
| 44 | yds. jack chain, 18c | 7 92 |
| 179 | pair brass butts, asst'd | 31 98 |
| 6 | doz. car window fasteners, $2 25 | 13 50 |
| 2 | papers finishing nails, 2s | 50 |
| 110 | chest and draw brass locks | 199 49 |
| 167 | chest, drawer, and cupboard iron | 79 50 |
| 36 | freight car locks, 8s | 26 00 |
| 21 | switch locks, 8s | 21 00 |
| 2 | dead locks, 5s | 1 25 |
| 15 | wardrobe and desk locks, 2s | 3 75 |
| 3 | padlocks, $2 | 6 00 |
| 119 | axe helves, 1s | 1 79 |
| 97 | sledge handles, 2s | 24 25 |
| 149 | adze and pick handles, 2s | 37 25 |
| 18 | hammer handles, 16c | 2 88 |
| 9 | flags and staffs | 2 00 |
| | Am't forw'd | 423,213 41 |

| | | |
|---|---|---|
| 453 | Amount brought forward | $423,213 41 |
| 68 | car brakes, complete, 2 50 | 170 00 |
| 23 | freight car doors, 3 50 | 80 50 |
| 50 | grain car doors, 1 67 | 83 50 |
| 14 | freight car trucks, framed, 5 60 | 78 40 |
| 58 | brake beams and heads, 2 s | 11 50 |
| 13 | pass. car steps, 2 50 | 32 50 |
| 5 | set dies and plates, 1 | 5 00 |
| 14 | augers and auger bits | 10 50 |
| 1 | brace, 10 s | 1 25 |
| 200 | lbs. wrenches, 1 s | 25 00 |
| 4 | freight house door rollers, 6 s | 3 00 |

| | | |
|---|---|---|
| | 4 pinch bar, 2 40 | $9 60 |
| | 6 crow bar, 2 40 | 14 40 |
| | 5 door clamps, 12 s | 7 50 |
| | 273 lbs. sole leather, 27 | 73 71 |
| | 96 ft. (5 in.) leather belting, 40 c | 38 40 |
| | 3 tin (3 gall.) cans, 8 s | 3 00 |
| | 27 tin (2 gall.) cans, 6 s | 20 25 |
| | 1 tin (4 gall.) water-pot, 12 s | 1 50 |
| | 3 tin (1 gall.) water-pot, 4 s | 1 50 |
| | 26 tin (1 gall.) oil can, 3s | 9 75 |
| | 2 tin (1 gall.) pail, 3s | 75 |
| | 7 tin dust pans, 2 s | 1 75 |
| | 17 tin dippers, 10 c | 1 70 |
| | 7 tin dripping pans, 6 s | 5 25 |
| | 2 tin pint measures, 15 c | 30 |
| | 11 tin lamp fillers, 2 s | 2 75 |
| | 1 tin funnel, 2 s | 25 |
| | 23 tin pint oil cans, 30 c | 6 90 |
| | 2 tin small oil cans, 10 c | 20 |
| | 2 tin wash basins, 2 s | 50 |
| | 6 tin 1 gall. measures, 6 s | 4 50 |
| | 3 tin ash pails, 1 | 3 00 |
| | 3 coal scuttles, 1 25 | 3 75 |
| | 5 porcelain linen hoppers, 3 50 | 17 50 |
| | Am't forw'd | 423,946 27 |
| 454 | Amount brought forw | $423,946 27 |
| | 6 porcelain lined urinals, 2 50 | 15 00 |
| | 4 white enam'l'd wash sinks, plated plugs, 6 25 | 25 00 |
| | 8 fire shovels, 15 c | 1 20 |
| | 7 pallet knives, 4 s | 3 50 |
| | 2 doz. axes | 15 00 |
| | 9 doz. stove polish, 58 c | 5 22 |
| | 7 Cook's pat. ventilators, 5 | 35 00 |
| | 11 gross lamp wicks, 12 s | 16 50 |
| | 3 railroad adzes, 12 s | 4 50 |
| | 13 lbs. twine, 40 c | 5 20 |
| | 27 brass door knobs, 6 s | 20 25 |
| | 12 plated door knobs, 16 s | 24 00 |
| | 24 car rim locks, 6 s | 18 00 |
| | 3 porcelain knobs, 2 s | 75 |
| | 3 rural knob latches, 3 s | 1 12 |
| | 20 porcelain knobs, 4 s | 10 00 |
| | 13 brass car locks, 22 s | 22 75 |
| | 20 car door keys, 1 s | 2 50 |
| | 50 slat lock keys, 6 c | 3 00 |
| | 9 door handles, 1 s | 1 12 |
| | 6 door locks, 12 s | 9 00 |
| | 2 cottage door locks, 6 s | 1 50 |

| | | |
|---|---|---|
| 14 | night latches, 8 s | $14 00 |
| 8 | lbs. escutcheon pins, 8 s | 8 00 |
| 74 | plated escutcheon pins, 8 c | 5 92 |
| 66 | lbs. brass seat hooks, 45 c | 29 70 |
| 11 | doz. seat locks, 5 | 55 00 |
| 4 | lbs. brass belt cord hangers, 44 c | 1 76 |
| 4 | brass bolts, 20 c | 80 |
| 6 | door pulleys, 6 s | 4 50 |
| 4 | boxes soap, 5 95 | 23 80 |
| 2 | car brushes, 10 s | 2 50 |
| 1 | counter brush, 3 s. 6 d | 44 |
| 2 | stove brushes, 2 s. 6 d | 62 |
| 5 | lamp chimney brushes, 5 c | 25 |
| | Amount forw'd | 424,333 67 |
| 455 | Amount brought forw'd | $424,333 67 |
| 2 | broom brushes, 10 c | 20 |
| 2½ | bales lamp wicking, 37 lb., 65 c | 24 05 |
| 5 | 1-in. brass faucets, 2 | 10 00 |
| 6 | ¾-in. brass faucets, 1 66 | 9 96 |
| 200 | lbs. lead pipe, 9 c | 18 00 |
| 41 | lbs. small brass castings, 45 c | 18 45 |
| 7 | steel squares, 10 s | 8 75 |
| 5 | hand saws, 20 s | 12 50 |
| 1 | pt. stove damper, 5 00 | 5 00 |
| 1 | side lacing leather, 20 s | 2 50 |
| 5 | sponges, | 1 38 |
| 60 | lbs. zinc, 15 c | 9 00 |
| 9 | floor mops, 1 s | 1 12 |
| 43 | water pails, 20 c | 8 60 |
| 2 | doz. shovels, 12 | 24 00 |
| 26 | scoops, 10 s | 32 50 |
| 85 | hand screws, 82 c | 69 70 |
| 12 | lbs. brass door catches, 45 c | 5 40 |
| 4 | oil gates, 3 s | 1 50 |
| 4 | lamp trimmers, 4 s | 2 00 |
| 11 | lbs. window lifts, 45 c | 4 95 |
| 8 | lbs. bell cord hangers, 45 c | 3 60 |
| 10 | lbs. seat hooks, 45 c | 4 50 |
| 10 | lbs. shutter hooks, 2 s | 2 50 |
| 3 | doz. blind fastenings, 12 s | 4 50 |
| 24 | match lighters, 3 s | 9 00 |
| 16 | lbs. seat rivets, 4 s | 8 00 |
| 17 | lbs. window fastenings, 19 c | 3 23 |
| 2 | doz. hangers and unis, 2 50 | 5 00 |
| 2 | doz. connections, 1 c | 25 |
| 25 | bushings, 2 s | 6 25 |
| 18 | coupling crooks, 2 s | 4 50 |

| | | | |
|---|---|---|---|
| | 8 doz. window springs, 4 s | | $4 00 |
| | 6 gro. screw eyes, 5 s | | 3 75 |
| | 6 doz. screw hooks, 5 s | | 2 25 |
| | Am't forw'd | | 424,664 56 |
| 456 | Amount bro't forw'd | | $424,664 56 |
| | 4½ doz. drawer pulls, 8 s | | 4 50 |
| | 9 doz. nit hooks and staples, 3 s | | 3 88 |
| | 26 doz. mahogany knobs, 20 c | | 5 20 |
| | 4 notice plates, 1 50 | | 6 00 |
| | 5 spring bolts, 1 s | | 62 |
| | 3 doz. cabin door hooks, 6 s | | 2 25 |
| | 5 doz. cabin door hooks, 2 s | | 1 25 |
| | 11 level glasses, 10 c | | 1 10 |
| | 4 lb. copper belt rivets, 78 c | | 3 12 |
| | 2 iron bolts, 1 s | | 25 |
| | 3 hat baskets, 3 50 | | 10 50 |
| | 2 panel doors, 2 | | 4 00 |
| | 2 ticket cases, 6 | | 12 00 |
| | 2 gal. iron smoke jacks. 2 s | | 50 |
| | 7 track gauges, 6 s | | 5 25 |
| | 4 bay windows pass. car, 3 50 | | 14 00 |
| | 3 cross-cut saws, 3 50 | | 10 50 |
| | Screws, hinges, and locks, as per bill of Bailey, Lang & Co., April, 1863: | | |
| | Screws, 1x14, 53 lb., at 30 c.; 1¼x14, 79 lb., at 40 c.; 2¼x18, 137 lbs., at 16 c.; 20, 157 lbs., at 12 c | $88 26 | |
| | Screws, brass 7x10, 104 lbs., at 10 c., 10 40; adv. 20 p. c., 2 08 | 12 48 | |
| | Screws, iron, 1x14, 53 lbs., at 10 c.; 1¼x10, 43 lbs., at 10 c.; 1½x10, 55 lbs., at 10 c.; 16, 88 lbs., at 40 c.; 2¼x18, 137 lbs., at 4 c.; 20, 157 lbs., at 8 c | 80 54 | |
| | 10 p. c. adv | 16 88 | |
| | | | 198 16 |
| | 10 gro. brass screws ⅝x7, 74 lbs.; 8, 80 lbs.; ¾x8, 82 lbs.; 1x10, 115 lbs | 35 10 | |
| | 20 p. c. adv | 7 02 | |
| | | | 42 12 |
| | Padlocks, No. 0, 3 doz., at 1 25; No. 7, 6 doz., at 4 50 | | 30 75 |
| | Locks, No. 91, 6 doz., at 4 75; No. 142, 4 doz., at 1 50; No. 86, 6 doz., at 4; No. 65, 3 doz., at 1 50; No. 130, 6 doz., at 4; No. 341, 6 doz., at 2 27 | 101 22 | |
| | Less 20 p. c | 20 24 | |
| | | | 80 98 |

| | | |
|---|---|---|
| 1¾ doz. heavy strap hinges, No. 8, 54 lbs., at 11 c.; No. 10, 91½ lbs., at 10 c.. | $15 09 | |
| 1½ doz. light strap hinges, No. 8, at 1 90; No. 10, at 3 | 8 58 | |
| | 23 67 | |
| 10 p. c. adv | 2 37 | |
| | | $26 04 |
| | | 425,127 03 |
| Deduct amount of rolling stock | | 392,438 00 |
| Carried over to page 13 | | 32,689 03 |

457 Machine shop inventory of rolling stock, tools, and materials May 1, '63.

| | |
|---|---|
| 458 Amount brought forward | $270,780 73 |
| 1 stationary engine | 1,200 00 |
| 1 boiler and fixtures | 600 00 |
| 1 hand lathe | 175 00 |
| 1 upright drill | 130 00 |
| 1 upright drill | 250 00 |
| 1 large planer (9 ft. bed) | 700 00 |
| 1 medium planer (8 ft. bed) | 550 00 |
| 1 small planer (5 ft. bed) | 250 00 |
| 1 double-headed engine lathe | 600 00 |
| 1 double-headed engine lathe | 250 00 |
| 1 driving wheel | 2,500 00 |
| 1 screw-cutting lathe (14 ft. bed) | 450 00 |
| 1 screw-cutting lathe (12 ft. bed) | 500 00 |
| 1 engine lathe (16 ft. bed) | 500 00 |
| 1 screw-cutting machine | 200 00 |
| 1 nut-tapping | 150 00 |
| 1 force and lifting pump | 75 00 |
| 1 cylinder boring bar | 100 00 |
| 1 valve seat planer | 90 00 |
| 1 wheel press | 100 00 |
| 1 boring machine | 350 00 |
| 18 bench vices, 15 | 270 00 |
| 150 ft. shafting, hangers, and pulleys attached | 1,200 00 |
| Belting, &c | 400 00 |
| Stocks and dies | 80 00 |
| 1 locomotive truck for extra service | 250 00 |
| 4 four large carrying jacks | 300 00 |
| 6 locomotive jacks | 60 00 |
| 6 scroll trucks | 200 00 |
| 1 planer chucks | 40 00 |
| 2 pistons, fitted | 40 00 |

| | | |
|---|---|---|
| 5 eccentric straps, fitted | | $33 00 |
| 1 set piston packing | | 35 00 |
| 1 set composition packing | | 60 00 |
| 2 loco. side rods (finished) | | 150 00 |
| 2 loco. main rods (partly) | | 90 00 |
| Amount forw'd | | 283,708 73 |
| 459 Amount brought forw'd | | $283,708 73 |
| 55 doz. files, 8 | | 440 00 |
| 6 doz. monkey-wrenches, 20 | | 360 00 |
| 36 ft. (one in.) rubber hose, 40 c | | 14 40 |
| 240 ft. (2¼-in.) rubber hose, (mch. shop,) 60 c | | 144 00 |
| 77 ft. (2¼-in.) rubber hose, (engines,) 60 c | | 42 00 |
| 30 rubber buckets, 2 50 | | 75 00 |
| 96 lbs. rubber cloth, 6 | | 75 00 |
| 1½ reams emery paper, 10 | | 15 00 |
| 6 ratchet drill stocks, 5 | | 30 00 |
| 100 lbs. hemp packing, 2 | | 25 00 |
| 50 lbs. martine yarn, 16 c | | 8 00 |
| 2½ doz. pat pails, 21 s | | 6 87 |
| 65 lbs. bar soap, 9½ c | | 6 17 |
| 4 dozen head-light chimneys | | 11 00 |
| 220 ft. leather bell cord, 8 c | | 17 60 |
| 283 lbs. taps and rimmers, 3 s | | 141 50 |
| 1,973 lbs. steel tools, (m'e shop,) 20 c | | 394 60 |
| 350 lbs. steel tools, (r'd house,) 20 c | | 7 00 |
| 2,005 lbs. iron tools, (m'e shop,) 10 c | | 200 50 |
| 896 lbs. cast-iron tools, (m'e shop,) 10 c | | 89 60 |
| 1,725 lbs. iron tools, (r'd house,) 10 c. | | 172 50 |
| 45 lbs. steel wire, 20 c | | 9 00 |
| 53,930 lbs. locomotive castings, 3¾ | | 2,022 36 |
| 1,555 lbs. loco. castings, (finished,) 10 c | | 155 50 |
| 49,120 lbs. loco. and road castings, (scrap,) 1½ | | 736 80 |
| 9 water gates, 7 | | 63 00 |
| 676 lbs. road castings, (furniture,) 3¾ | | 25 35 |
| 40,564 lbs. road joint chains, 3¾ | | 1,521 15 |
| 9,261 lbs. switch chains, frogs, and switches, 3¾ | | 347 28 |
| 3,692 lbs. loco. brass castings, 40 c | | 1,476 80 |
| 153 lbs. loco. brass castings, finished, 60 c | | 91 80 |
| 1,255 lbs. loco. scrap brass, 25 c | | 313 75 |
| 10 loco. steam gauges (old) 7 | | 70 00 |
| 30 ft. (2-in.) gas pipe, 60 c | | 18 00 |
| 60 ft. (1-in.) gas pipe, 20 c | | 15 60 |
| Amount fow'd | | 292,850 86 |

| | | |
|---|---|---|
| 460 | Amount brought forward | $292,850 86 |
| 8,203 lbs. | punched nuts, 11 c | 302 33 |
| 2,590 lbs. | new drivers, 3¾ | 97 11 |
| 2,690 lbs. | scrap nuts, 3 c | 80 70 |
| 30,561 lbs. | new ties, 14 c | 4,278 54 |
| 6,233 lbs. | old ties, 6 c | 373 98 |
| 23,750 lbs. | old driving-wheels, 1½ | 356 25 |
| 2,200 lbs. | old driving axles, 3 c | 66 00 |
| 17,262 lbs. | old car axles, 3 c | 517 86 |
| 17 pairs | 30-in. wheels and axles, fitted, 50 | 850 00 |
| 14 pairs | 28-in. wheels and axles, fitted, 50 | 700 00 |
| 2 pairs | 26-in. wheels and axles, fitted, 48 | 96 00 |
| 4 pairs | 24-in. wheels and axles, fitted, 46 | 184 00 |
| 31 | new 30-in. truck wheels, 15 | 465 00 |
| 30 | new 28-in. truck wheels, 15 | 450 00 |
| 12 | new 26-in. truck wheels, 15 | 180 00 |
| 51 | old 28-in. truck wheels, 7 | 357 00 |
| 23 | old 30-in. truck wheels, 7 | 161 00 |
| 1,400 galls. | tallow, 80 c | 1,120 00 |
| 173 galls. | lard oil, 80 c | 154 40 |
| 1,517 galls. | coal oil, 60 c | 910 20 |
| 672 galls. | freight car oil, 80 c | 501 60 |
| 127 galls. | engine oil, 75 c | 96 75 |
| 107 galls. | head-light oil, 1 10 | 117 70 |
| 301 galls. | elephant oil, 1 | 301 00 |
| 2,241 lbs. | wiping waste, 30 c | 672 30 |
| | Copper shop: | |
| 1 pair | bellows | 14 00 |
| 1 | bench vice | 7 00 |
| 2 pairs | bench shears | 18 00 |
| 1 pair | snips | 5 00 |
| 1 | bending board | 4 00 |
| 56 lbs. | steel tools, 2 s | 14 00 |
| 603 lbs. | wr't iron, 22 c. | 132 66 |
| 130 lbs. | sheet copper, 55 c | 71 50 |
| 90 lbs. | copper pipe, new, 6 s | 60 50 |
| | Am't fow'd | 306,567 24 |
| | Amount brought forw'd | $306,567 24 |
| 461 365 lbs. | copper pipe, old, 30 c | 109 50 |
| 160 do. | old brass, sheet, 35c | 56 00 |
| 265 lbs. | lead, 9 c | 23 85 |
| 55 do. | block tin, 53 c | 29 15 |
| 227 do. | scrap copper, 25 c | 56 75 |
| 6 do. | Babbett metal, 55 c | 3 30 |
| 25 do. | hardening, 50 c | 12 50 |
| 9 do. | spelter solder, 50 c | 4 50 |
| 888 do. | 2 in. copper flue, 53 c | 470 64 |

| | |
|---|---|
| 260 do. 2 in. brass tubes, 38 c | $98 80 |
| 630 do. 2 in. copper tubes, old, 43 c | 270 90 |
| 522 do. 1¾ in. copper tubes, new, 53 c | 282 56 |
| 65 do. ¾ in. copper tubes, new, 53 c | 34 45 |
| 247 do. sheet lead, 8 c | 19 76 |
| 96 lbs. brass banding, 52½ per lb | 50 40 |
| Miscellaneous tools | 6 00 |
| Boiler shop: | |
| One punching and shearing machine | 200 00 |
| One set rollers | 80 00 |
| 2 portable fuges | 64 00 |
| One pair hand shears | 8 00 |
| 2 screw punches | 60 00 |
| One flue saw | 6 00 |
| 6 monkey wrenches | 9 00 |
| 616 lbs. steel tools, 18 c | 110 88 |
| 1,330 do. iron tools, 7 c | 92 10 |
| 2,409 do. cast flanging blocks, &c., 4 c | 96 36 |
| 3,561 do. ½ in. Low Moor iron, 7¼ c | 267 07 |
| 2,730 do. 5-16 common iron, 5½ c | 150 15 |
| 2,285 do. 12, 14, 16, 18 iron, 5½ c | 125 76 |
| 83 do. galvanized iron, 14 c | 11 62 |
| 903 do. ⅝ rivets, 7 c | 49 21 |
| 367 do. ⅜ rivets, 7 c | 25 69 |
| 728 do. assorted rivets, 13½ c | 91 00 |
| 38 do. band iron, 7 c | 2 66 |
| Am't fo'w'd | 309,545 80 |
| 462 Amount brought forw'd | $309,545 80 |
| 643 lbs. scrap iron, 3 c | 19 26 |
| 221 square ft. bonnet cloth, 10 c | 22 10 |
| 2 small stacks | 50 00 |
| Tin shop: | |
| One pair 30 in. rollers | 15 00 |
| One stove pipe folder | 8 00 |
| One grover | 7 00 |
| One tin folder | 10 00 |
| One large beading machine | 25 00 |
| One small do. do | 12 50 |
| One small turner machine | 6 00 |
| One large burning do | 6 00 |
| One small do. do | 5 50 |
| One setting down do | 6 00 |
| One swing do | 8 00 |
| One roffing folder | 3 00 |
| 2 bench vices | 12 00 |
| One press punch | 35 00 |
| One 30 in. iron clamp | 8 00 |

| | | |
|---|---|---|
| 3 | cast iron mandrels | $8 50 |
| One | gutter reader | 3 00 |
| One | swedge do | 75 |
| One | flat mandrel | 5 00 |
| 3 | rivet sets | 1 75 |
| One | dusting brush | 75 |
| One | stovepipe mandrel | 7 50 |
| One | beak horn stake | 10 00 |
| One | blow do. do | 3 50 |
| One | statchell do | 3 75 |
| One | creasing do | 3 00 |
| One | candle mould | 2 00 |
| One | candle case | 1 75 |
| One | planishing stake | 6 00 |
| 3 | conductor do | 3 00 |
| 2 | elevator bucket | 3 50 |
| | Am't forw'd | 309,867 91 |

| | | |
|---|---|---|
| 463 | Amount brought forw'd | $309,867 91 |
| | One cast iron face plate | 1 20 |
| 12 | hammers | 8 00 |
| 3 | raising hammers | 3 05 |
| 7 | mallets | 1 13 |
| 2 | squares | 2 50 |
| 4 | hand grooves | 2 50 |
| 2 | pair small shears | 3 00 |
| 16 | chisels | 4 00 |
| 11 | punches | 1 75 |
| 6 | hollow punches | 2 50 |
| 5 | fire pots | 8 00 |
| 10 | soldering irons | 9 00 |
| 2 | pair large shears | 12 00 |
| | Miscellaneous tools, &c | 12 00 |
| | Patterns for tin work | 12 00 |
| 112 | sheets 1 X tin, 14 by 20 | 20 75 |
| 133 | do. 1 XXX tin, 14 by 20 | 33 46 |
| 313 | do. 16 do. 10 by 14 | 23 50 |
| 171 | do. 1 X do. 10 by 14 | 13 50 |
| 266 | do. roofing do. 14 by 20 | 49 40 |
| 645 | lbs. galvanized iron, 14 c | 90 30 |
| 489 | do. Russia do., 20 c | 97 80 |
| 140 | do. common do., 7 c | 9 80 |
| 140 | do. iron wire, 9 c | 12 60 |
| 46 | do. galvanized iron, 12 c | 5 22 |
| 7 | do. copper do., 65 c | 4 55 |
| 3½ | do. brass do., 35 c | 1 22 |
| 25 | do. tinner's rivets, 45 c | 11 25 |
| 6 | sheets perforated tin, 2s | 1 50 |

Blacksmith shop:

| | | |
|---|---|---|
| 3,580 lbs. anvils, 12½ c | | $447 50 |
| 990 do. cast anvils, 5 c | | 49 50 |
| 2,585 do. face plates, 5 c | | 129 25 |
| 1,125 do. bolt headers, 6 c | | 67 50 |
| 600 do. cast horse, 4 c | | 24 05 |
| Am't fo'w'd | | 311,043 14 |
| 464 | Amount brought forw'd | $311,043 14 |
| 238 lbs. battering ram, 5 c | | 11 90 |
| 543 lbs. sledges and hammers, 13 c | | 70 59 |
| 1,049 do. swedges, 10 c | | 104 90 |
| 1,774 do. fullers and chisels, 30 c | | 532 20 |
| 410 do. cast swedge and blocks, 4c | | 16 40 |
| 2,866 do. tongs, 10 c | | 286 60 |
| 210 do. spring rench, 8 c | | 16 80 |
| 2,753 do. mandrels and pins, 10 c | | 275 30 |
| 2,892 do. pat swedge blocks and dies, 10 c | | 289 20 |
| 2 bellows, $16 | | 32 00 |
| 2 cranes, $25 | | 50 00 |
| 1 set tops, dies, and plate | | 40 00 |
| 43 tons coal, $9 | | 387 00 |
| 55,953 lbs. flat rolled iron, 5 c | | 2,797 65 |
| 3,204 do. hammered do., 7 c | | 224 28 |
| 3,003 do. square do., 5 c | | 150 15 |
| 18,165 do. round do., 5 c | | 908 25 |
| 773 do. angle do., 6 c | | 46 38 |
| 293 do. half round do., 6 c | | 17 58 |
| 3,739 do. vane I do., 6 c | | 224 34 |
| 4,556 do. cast steel, 20 c | | 911 20 |
| 1,277 do. forgings, 10 c | | 127 70 |
| 1,470 do. crank pins, 8 c | | 117 60 |
| 1,386 do. r'd hammered, 8 c | | 110 88 |
| 5,480 do. couplings and links, &c., 7 c | | 383 60 |
| 3,170 do. chain, as't'd, 11 c | | 348 70 |
| 7,908 do. spring steel, 8 c | | 632 64 |
| 7,534 do. locomotive springs, 13 c | | 979 42 |
| 2,352 do. car, 13 c | | 805 76 |
| 1,361 do. chain bolts and keys, 8 c | | 108 88 |
| 82,348 do. scrap iron, wr't, 2 c | | 1,646 96 |
| 11,700 do. wr't shavings, ¾ c | | 87 75 |
| 3,589 do. old tires, 6 c | | 215 34 |
| 6,230 do. scrap, spring, and cast steel, 3c | | 186 9 |
| Am't forw'd | | 324,187 99 |

| | | |
|---|---|---|
| 465 | Amount brought for'd | $224,187 99 |
| | Portage City shop: | |
| 13 | male and female swedges | 12 00 |
| 10 | heading tools | 8 00 |
| 8 | male and female fullers | 6 00 |
| 34 | pair tongs | 25 00 |
| 14 | punches | 8 40 |
| 14 | chisels | 8 40 |
| 2 | pair bellows | 36 00 |
| 2 | bench vices | 16 00 |
| 1 | anvil | 25 00 |
| 12 | fork wrenches | 12 00 |
| 3 | jacks | 27 00 |
| 2 | ratchets and drills | 18 00 |
| 2 | die plates, 17 tap, 12 set dies | 50 00 |
| 1 | driving spring | 8 00 |
| 12 | files and 2 monkey wrenches | 12 00 |
| 1 | block and fall | 50 00 |
| 7,349 | lbs. iron, 5c. | 367 45 |
| 107 | lbs. cast steel | 21 40 |
| 50 | lbs. ore, in washers, 15c. | 7 50 |
| 190 | lbs. punched nuts, 11c. | 20 90 |
| 3 | sledges | 4 50 |
| 27 | coupling pins | 14 80 |
| 2 | switch rods | 3 40 |
| 2 | hammers, $1 | 2 00 |
| 21 | coupling links | 16 80 |
| 2 | draw bars | 18 60 |
| 705 | lbs. spring steel, 8c. | 56 40 |
| 75 | lbs. scrap iron | 1 00 |
| 100 | lbs. old steel, 5c. | 5 00 |
| 1 | pair forward truck wheels | 50 00 |
| 2 | pair 30-in. wheels, on axles | 100 00 |
| 5 | truck brasses | 24 00 |
| 4 | tender brasses | 12 00 |
| 1½ | tons coals, $9 | 13 50 |
| | Am't forw'd | 325,249 04 |
| 466 | Amount brought forw'd | $325,249 04 |
| 75 | joints stovepipe | 13 09 |
| 86 | galls. engine oil, 80c. | 68 80 |
| 43 | galls. tallow | 34 40 |
| 120 | lbs. waste, 30c. | 36 00 |
| 6 | Bose stoves | 240 00 |
| | Miscellaneous items | 15 00 |
| | La Crosse shops: | |
| 127 | lbs. chisels, 2s. | 13 75 |
| 333 | lbs. pinch bars, levers, fork wrenches, &c., 10c. | 33 30 |

| | | |
|---|---|---|
| 11 lbs. old gauge cock brass, 35c. | | $3 85 |
| 178 ft. stovepipe | | 23 60 |
| 26 lbs. engine truck brasses, 40c. | | 10 40 |
| 9 lbs. rabbit metal, 40c. | | 3 60 |
| 6 lbs. rubber cloth, 14c. | | 84 |
| 215 galls. tallow, 80c. | | 172 00 |
| 129 galls. engine oil, 30c. | | 103 20 |
| 90 lbs. wiping waste | | 27 00 |
| 1 pair 28-in. wheels, and axles fitted | | 50 00 |
| 1 bench vice, 2 jack screws | | 27 00 |
| 2 monkey wrenches | | 4 00 |
| Assorted files | | 10 00 |
| Brooms, shovels, axes, pails, saws, hammers, sledges, lanterns, lamps, measures, &c., &c. | | 35 00 |
| 4,084 lbs. wire, 5½c. | | 224 62 |
| 1,200 lbs. old iron, 3c. | | 36 00 |
| 80 lbs. cast steel, 20c. | | 16 00 |
| 1,600 lbs. scrap iron, 2c. | | 32 00 |
| 710 lbs. iron work, finished and unfinished, 10c. | | 71 00 |
| 1,276 lbs. bolts, nuts, &c., 11c. | | 140 36 |
| 8 tons coal, $9 | | 72 00 |
| 70 lbs. heading tools, 12c. | | 8 40 |
| 256 lbs. swedges, 12c. | | 30 72 |
| 60 lbs. hammer and sledges, 12c. | | 7 20 |
| 384 lbs. iron tongs, 10c. | | 38 40 |
| Am't forw'd | | 326,868 57 |
| 467 Amount brought forw'd | | $326,868 57 |
| 45 lbs. chisels and fullers, 18c. | | 8 10 |
| 3 screw plates, 18 taps, 1 ratchet drill, &c. | | 75 00 |
| 2 anvils, $50; 2 vices, $18; 2 bellows, $32; 1 cast anvil and block, $50 | | 150 00 |
| 1 stove, grindstone, &c., &c. | | 40 00 |
| | | 327,141 67 |
| Page 13: | | |
| Deduct amount locomotives | | 270,780 73 |
| | | 56,360 94 |
| Deduct amount in La Crosse shops | | 1,902 63 |
| | | 54,458 31 |
| Amount bro't from page 7 | | 32,689 03 |
| Value of amount supplies | | 87,147 34 |

468 *Inventory of wood, ties, track tools, and material on eastern division.*

311 shovels.
152 picks and handles.
99 crow-bars.
62 claw-bars.
24 gauges.
27 adzes.
64 spiking hammers.
20 axes.
11 sledges.
7 curring hooks.
8 hand-car wheels.
1 hand-car truck.
66 tamping bars.
6 switch gates.
21 monkey wrenches.
8 fork wrenches.
105 cold chisels.
35 punches.
4 track levels.
24 water pails and dippers.
8 steel drill.
1 straightening machine.
3 kegs nails.
2,000 bricks.
14 scoop shovels.
2 box rollers.
11 bush scythes.
1 cauldron kettle.
6 spades.
6 post augurs.
7 switch chains.
30 lanterns.
1,194 feet b. m. sq. timber, 6 x 12.
8,412 feet b. m. sq. timber, 12x12.
½ pkg. lamp wicking.
½ box soap.
½ doz. picks.
18,660 feet crossing plank.
150 chairs.
10 kegs spike.
32 iron rails, 28 ft. long.
64 iron rails, 24 ft. long.
586 iron rails, old.
5,308 cross ties.
8,136 fence posts.
11,723 cords wood.
2,180 cords wood, sawed, 13,903.
1,286 pounds scrap iron.
1,500 pounds cast iron.
4 boxes glass.
10 joints stovepipe; 1 elbow.
5 gross screws.
1 Gumshaw pump, worn out.
1 McGowan pump, burst.
225 pounds lead pipe, old.
1 grindstone.
1 soldering furnace.
20 pounds black paint.
150 feet matched flooring.
5 lbs. 40′ spike.

In store, Milwaukee:

35 doz. shovels.
½ doz. scoop shovels.
1 bbl. head light oil.
1 bbl. car light oil.
1⅓ doz. green lanterns.
4¾ doz. red lanterns.
7 doz. white lanterns.
1¼ doz. adz.
½ doz. axes.
¼ doz. axes, hand.

Tools at Portage City:

2 wheelbarrows.
1 cross-cut saw.
469 4 doz. pick handles.
7½ doz. axe handles.
12½ doz. hammer handles.
10½ doz. adze handles.
11 doz. brooms.
3 galls. fluid.
1 gall. turpentine.
3 3-gall. cans.
5 1-gall. cans.
9 lamp fillers.
4 qt. dippers.
4 pt. dippers.
2 doz. switch slides.
1 spike drawer.
2 oil dippers.
2 gall. measures.
2 ½-gall. measures.

*Inventory of wood, ties, &c.*—Continued.

2 funnels.
1 cast-iron stove.
8 water pails.

In Quarry Beaver Dam:

2 stone sledges.
4 shovels, new.
4 shovels, old.
4 picks and handles.
12 hand drills
1 water pail and tin cup.
4 wheelbarrows.
25 lbs. feather and wedges.
1 carpenter's level.
1 hand hammer.
Iron for derrick.
1 pile-driving machine.
1 pile-driving machine, horse power.
4 pile rings.

470 *Inventory furniture, stationery, &c., in stations and offices on eastern division.*

Portage City station:

1 platform scale.
2 trucks.
2 old desks.
2 ticket cases.
8 chairs.
1 iron safe.
1 money drawer.
2 stoves and pipe, and ash pail.
1 poker, shovel, and tongs.
Books and stationery.
1 oil can and lamp filler.
3 lamps.
2 lanterns.
1 clock.
1 iron bar.
2 axes.
1 beetle and 2 wedges.
1 relay register and battery.

Midland:

1 desk and stationery.
1 Herring safe.
1 table.
2 chairs.
1 stool.
1 stove and pipe.
1 lantern.
2 kerosene lamps.
1 ticket case.
1 money drawer.
1 lantern.
1 ticket stamp and type.
2 warehouse trucks.
1 platform scale.
1 keg nails.
1 marking-pot.
1 ash pail.

Cambria station:

1 desk and stationery.
1 inkstand.
1 box pens.
1 telegraph table.
1 relay register and battery.
1 office table.
2 stoves and pipe, and ash pail.
6 common chairs.
2 stoves, old.
2 lanterns.
4 kerosene lamps.
3 oil cans.
1 ticket stamp box and type.
1 platform scale.
1 ticket case.
1 money drawer.
1 platform scale.

*Inventory of furniture, &c.*—Continued.

471 Randolph station:

1 desk and stationery.
1 ticket case.
1 money drawer.
1 ticket stamp and box type.
2 lanterns.
5 chairs.
1 relay register and battery.
1 oil can.
1 settee.
2 stoves and pipe.
1 warehouse truck.

Fox Lake station:

1 desk and stationery.
2 tables.
2 stoves and pipe.
1 relay register, key, and battery.
2 lanterns.
3 benches.
1 chair.
1 stool.
1 broom.
1 pail.
1 single desk.
1 ticket case.
1 stamp and box type.
2 bracket lamp.
2 warehouse trucks.
1 platform scale.

Beaver Dam station:

1 long office desk.
2 desks with cases.
6 common chairs.
2 kerosene lamps.
1 bracket do.
1 lantern.
1 office safe.
1 copy press and frame.
4 stoves and 21 lengths of pipe and 6 elbows.
20 y'ds carpet in ladies room, (old.)
1 sofa, (old.)
1 long settee.
1 coupon ticket and case.
1 local ticket and case.
1 table.
1 ticket stamp, type, &c.
3 oil cans, broom, water pails, and dipper.
1 warehouse scale.
2 do. trucks.
1 bunk and 3 quilts.
1 money drawer, stationery, blanks, &c.
1 relay register battery, telegraph table, &c.

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Rolling Prairie station:

3 settees.
3 chairs.
2 stoves and pipe.
1 desk, book-case, and stationery.
1 stool.
1 ticket case.
1 do. stamp and type.
1 money drawer.
1 kerosene lamp.
1 lantern.
1 platform scale.
1 warehouse truck.
2 oil cans.

Minnesota junction:

1 ticket case.
1 relay register and battery.
1 copy press.
3 bracket lamps.
2 ticket stamps.
1 warehouse truck.
1 baggage do.
1 platform scale.
1 safe.
3 stoves and pipe.
3 settees.
15 chairs.
1 carpet.

*Inventory of furniture, &c.*—Continued.

1 desk and stationery.
1 ticket stamp and type.

Horicon station:

2 desks and stationery.
1 telegraph.
1 sounder key, relay, and battery.
1 ticket case.
1 do. stamp and type.
1 office chair and cushion.
1 money drawer.
4 stoves and pipe.
1 bracket lamp.
1 kerosene lamp.
3 lanterns.
1 platform scale.
2 warehouse trucks.
1 outside lantern.
1 settee.
3 oil cans.

Iron Ridge station:

1 desk, book case, and stationery.
2 kerosene lamps.
2 lanterns.
3 chairs.
1 stool.
2 stoves and pipe.
1 warehouse truck.
1 platform scale.
1 ticket case.
1 ticket stamp and type.
1 settee.
1 outside lantern.
1 hammer.
1 pail and dipper.

Woodland station:

1 desk.
1 book case and stationery.
1 ticket case.
1 relay register and battery.
1 money drawer.
1 stamp and type.
2 chairs.
1 settee.
4 stoves and pipe.
2 warehouse trucks.
1 platform scale.
1 kerosene lamp.
1 lantern.
1 outside lamp.
2 oil cans.
1 lamp filler.

Rubicon station:

2 settees.
2 kerosene lamps.
2 lanterns.
2 oil cans.
1 warehouse truck.
1 platform scale.
1 stove and pipe, ash pail.
1 ticket stamp and type.
1 ticket case.

Hartford station:

1 desk, book case, and stationery.
4 chairs.
1 stool.
1 settee.
1 relay register, key, and battery.
1 ticket case.
1 stamp and type.
1 warehouse truck.
1 platform scale.
4 oil cans.
2 kerosene lamps.
1 lantern.
1 do. (outside.)
2 stoves and pipe.
1 bracket lamp.

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*Inventory of furniture, &c.*—Continued.

Schlessingville:

4 desks and stationery.
1 book case.
1 ticket case.
1 ticket stamp and type.
1 money drawer.
1 office chair.
6 common chairs.
2 stoves and pipe.
4 oil cans.
2 kerosene lamps.
2 lanterns.
1 do. (outside.)
1 platform scale.
2 warehouse trucks.
1 bedstead, bed, and bedding.

Richfield station:

1 desk and stationery.
1 office chair.
8 common do.
1 telegraph table.
1 do. instrument and battery.
1 warehouse truck.
1 platform scale.
2 kerosene lamps.
2 lanterns.
1 do. (outside.)
2 oil cans.
1 water pail and dipper.
1 ticket case.
1 ticket stamp and type.
1 bedstead, bed, and bedding.

Granville station:

1 desk and stationery.
2 stoves and pipe and ash pan.
1 telegraph instrument, complete.
6 common chairs.
1 office chair.
1 bedstead, bed, and bedding.
1 ticket case.
1 ticket stamp and type.
2 benches.
1 lantern.
2 kerosene.
2 large oil cans.
2 small do.

Milwaukee general freight office:

1 fire (King) safe.
1 Herring's safe.
2 black walnut desks.
1 single oak desk.
1 mahogany desk.
1 small mahogany table.
1 oak table.
2 sheet iron stoves and pipes.
1 lounge, old.
2 W. B. cases.
1 copying press and table.
2 cases pigeon holes.
1 gas chandelier.
1 gas fixture, 2 burners.
4 office stools.
5 office chairs.
4 maps.
3 curtains.
2 carpets.
2 baskets.
desks and stationery.
32 blanks.
11 desk do.
500 local freight tariffs.
30 local freight tariffs on stretchers.
9 tally books.
27 impression books.
8 dray receipt books.
28 collection books.
14 index books.
11 cash books.
6 out-freight receipt books.
26 in-fr't receipt books.

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*Inventory of furniture, &c.*—Continued.

20 md'se rec. books.
12 md'se fn'd books.
6 daily bal. books.
3 weekly bal. books.
28 qr. plain blank books.
16 qr. octavo blank books.
4 reams letter paper.
3 reams cap paper.
5 reams note paper.
4 letter files.
3 slates.
1 doz. card cases.
1 doz. jet reg. books.
3 doz. small mem. books.
1 doz. ink, pts.
½ doz. ink, qts.
25,000 9 in. envelopes.
10,500 6-in. envelopes.
10,000 10-in. envelopes.
7,000 11-in. envelopes.
21,500 8¼-in. envelopes.

Local fr't office:

52 feet desk and drawers.
2 bill cases.
8 stools.
3 arm chairs.
1 W. B. press and stand.
1 clock.
3 pa. baskets.
6 gas brackets and shades.
1 stove pipe.
1 drum and pipe.
1 old box stove.
1 letter press.
1 desk.
1 desk, old.
1 counter and desk, cash office.
1 Herring's safe.
1 bill case.
1 hand stamp.
1 gas chandelier.
1 gas fixture, 2 burners.
1 carpet on floor.
1 wood box.
1 platform scale.

Warehouse:

5 stoves and pipe.
3 gas brackets.
8 arm chairs.
1 stool.
41 trucks.
1 truck, broken.
4 platform scales.
4 canvas covers.
1 box stove and pipe in triangle.
9 trucks.

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Manager's office:

10 office chairs.
1 sofa.
1 small Berliner & B. safe.
1 walnut table.
1 walnut table, long.
1 R. R. stovepipe and zinc.
2 chandeliers.
1 wool carpet on floor.
1 matting on floor.
1 sheet iron stove and pipe.
1 Mahogany desk (small.)
7 curtains.

Cahsier's office:

1 long desk and drawers.
1 oak desk.
1 table.
1 large Berliner & B. safe.
1 matting carpet
3 curtains.
1 small case pigeon holes.
1 chandelier.
1 stove and pipe.
1 letter press and stand.
3 chairs, washstand, water-cooler, &c.
Wood box.

Engineer's office:

1 large Bor & Bunse safe.
1 Herring's safe.

*Inventory of furniture, &c.*—Continued.

1 long desk and drawers.
1 small desk, bl'k walnut.
1 case pigeon holes.
1 cupboard, bl'k walnut.
5 chairs.
1 old table.
1 letter press and table.
Maps, land maps, &c.
1 carpet.
1 sheet iron stove and pipe.
1 drawing table.

General ticket office:

4 desks.
2 cases drawers.
1 safe.
6 curtains and fixtures.
1 chandelier.
2 stoves and pipes.
3 tables.
1 mat carpet.
1 bulletin.
1 drop light.
1 lounge.
4 chairs.
21 bottles stamping ink.
1 letter press and table.
1 ticket safe.
2 upright cases with tickets.
2 long cases with tickets.
2 ticket presses.
1 eyelet machine.
1 stamp and type.
3 hand type.
1 lot local tickets.
1 gas fixture.
Desk and other stationery.

Telegraph office:

1 telegraph table.
2 sets telegraph instruments.
2 sets telegraph battery.
2 oak tables.
4 office chairs.
1 stove and pipe.
1 iron safe, old.
476 1 water cooler.
1 floor matting.
3 window curtains.
2 gas fixtures.

Passenger room:

1 small safe.
1 ticket case.
1 chair.
1 stool.
} Ticket office.
1 standard dock.
11 settees.
3 stoves, pipe and zinc.
2 water coolers.
3 sets gas fixtures.
1 washstand and bowl.

477 *Inventory of wood, ties, track, material, &c., on western division.*

15,682 cords wood.
14,652 cords ties.
9,685 fence posts.
4,772 ft. square timber, lineal.
5,000 ft. fencing B. M.
2,000 ft. flooring (dressed) B. M.
140 piles.

Tools at La Crosse:

1 tool box.
7 crow bars.
1 claw bar.
1 sledge.
2 spike hammers.
2 chairs.
2 fork wrenches.
1 hammer.
1 belt stock.
1 oil can.
4 shovels.
2 flags.
1 grub hoe.
2 picks.
100 ft. ½ in. rope.
100 ft. 1 in. rope.
50 ft. ¾ in. rope.
59 bars iron rails.

*Inventory of wood, ties, &c.*—Continued.

7 bars iron rails, 20 ft.
2 bars iron rails, 26 ft.
29 bars iron rails, 20 ft.
8 bars iron rails.
18 bars iron rails.
4 bars iron rails 15.
1 bar iron rails, 21.
2 bars iron rails, 16.
3 bars iron rails.
19 bars iron rails, 20.
9 iron bars, 21 ft.
2 iron bars, 6.
9 iron bars.
20 punches.
60 chisels.
21 adzes.
8 wrenches.
19 axes.
15 hatchets.
6 truck levels.
16 pails.
4 bush hooks.
900 lb. rail nails.
38 truck bars.
32 claw bars.
42 tamping.
22 pinch bars.
1 hand-car wheel.
33 spiking hammers.
56 picks.
153 shovels.
12 flags.
3 switch targets.
3 guard rails.
5 switch ropes.
12 car springs.
3 brake screws.
91 brake hammers.
22 axe handles.
12 switch locks.
19 lanterns.
18 pad locks.
59 chains.
6 spades.
7 post augers.
8 hammers.
11 saws.
2 sledges.
478 14 gauges.
15 stoves.
58 length pipe.
9 elbows.
4 pick handles.
2 frogs.
76 budge ties.
2 buckets.
3 wheel barrows.
2 fuel-blocks.
1 hose.
12 head block chains.
18 oil cans.
128 chairs.
241 spike (pounds)
60 spike nails (pounds)
800 ft. crossing plank.
40 lbs. lead pipe.
872 lbs. budge bolts.
2 drill springs.
Lisbon:
7 frog plates.
1 cast iron frog.
39,900 pounds iron rails.
2,000 pounds old chain and scrap.
45 ft. iron 1 x 2.
54 ft. iron $\frac{5}{8}$ x 2.
24 ft. iron $\frac{1}{2}$ x 2.
45 ft. iron $\frac{7}{8}$ x 2.
132 ft. iron $\frac{3}{4}$ x 2.
45 ft. iron $1\frac{1}{4}$ 0.
10 ft. iron 2 in. 0.
47 ft. iron 1 in. 0.
210 ft. iron $\frac{5}{8}$ in. 0.
24 ft. iron $\frac{3}{4}$ in. 0.
34 ft. iron $\frac{3}{8}$ in. 0.
1 engine brace.
300 lbs. worked iron.
18 cold chisels.
1 fork wrench.
3 tons coal.
9 ft. $1\frac{1}{4}$ in. □ steel.
1 car axle, broken.
17 swedges.
16 steel punches.
45 croch R. R. chains.
7 setting hammers.
5 bolton swedges.

*Inventory of wood, ties, &c.*—Continued.

15 pr. tongs.
9 sledges.
1 hand hammer.
1 anvil.
6 files.
2 fork wrenches.
1 blacksmith vice.
5 screw taps.
1 screw plate.
9 bolt tools $\frac{3}{8}$ to in.
1 steel square.
1 pr. callipers.
2 slates.
1 shovel.
1 stove.
479 14 lengths pipe, 1 elbou.
1 scoop shovel.
1 water pot.
1 water pot, 2 pails, 1 dipper.
1 grindstone.
1 drill machine.
3 fork wrenches.
1 rail block.
5 pokers.
1 wheelbarrow.
3 fork tongs.
2 wrenches, monkey.
1 wood barrow.
1 stove, 16 lengths pipe.
16 ft. 2-in. copper pipe.
1 lantern.
3 stoves.
46 lengths pipe.
2 pinch bars.
1 blacksmith vice.
2 brooms.
3 oil cans.
1 bbl. oil.
9 bbl. oil, empty.
1 ash tub.

In Elevator La Crosse:

16 new el. buckets, large.
16 new el. buckets, small.
17 old el. buckets, large.
12 old el. buckets, small.
1 pulley.
1 grindstone.
6 lanterns.
6 oil cans.
17 scoops.
6 pr. blocks.
3 brooms.
25 nails.
6 pails.
$1\frac{1}{4}$ doz. elevator slides.
150 lbs. worked iron.
2 belt clamps.
4 carpenter saw horses.
1 coal box.
4 long iron rods.
2 monkey wrenches.
400 ft. old belting.
2 gun pipe elbows.
1 desk.
2 work benches.
1 iron sledge.
80 ft. 2 in. rope.
100 lbs. old rope.
4 car doors.
1 iron bar.
1 door and frame.
250 ft. dressed lumber.
3 ladders.
4 oil cans.
1 monkey wrench.
1 sledge hammer.
4 files.
1 water pail.
1 stove.
4 lengths pipe.
2 elbows.
1 kerosene lamp.
100 lbs. grate bars.

*Inventory of furniture on Mississippi river.*

Mineapolis:

1 ticket case.
1 stamp and pad.

St. Anthony:

1 ticket case.
1 stamp and pad.

480 St. Paul:

1 ticket case.
2 office desks.
2 stoves and pipe.
1 drum and pipe.
1 platform scale.
1 letter press.
1 safe.

Hudson:

1 ticket case and stamp.

Hastings:

1 ticket case and stamp.

Prescott:

1 ticket case and stamp.

Red Wing:

1 ticket case and stamp.

Lake City:

1 ticket case and stamp.

Winona:

1 ticket case and stamp.

Trempleau:

1 ticket case and stamp.

481 *Inventory of furniture, stationery, &c., in station offices, western division.*

La Crosse passenger room:

3 settees.
1 sofa.
1 lamp.
1 stove and 9 lengths pipe.
1 water pail.
1 stove, and 9 lengths pipe and 2 elbows.
4 settees.
1 lamp.
1 water cooler, 2 tin cups.
20 bars soap.
8 lanterns.
9 reflector lanterns.
½ bbl. kerosene oil.
1 bbl. head light oil.
1 bbl. empty.
4 bbl. brooms.
1 brush.
3 coal buckets.
12 balls wicking.
6 benches.
2 oil cans.
1 coal shovel.
1 hand lamp.
7 office lamps.
1 b'x stove.
10 lengths pipe.
1 lantern.
1 baggage truck.
1 desk.
356 local checks.
1 chopping axe.
1 broom.

La Crosse station:

2 large desks.
1 local ticket case.
1 coupon ticket case and desk.
2 coal stoves.
1 wood stoves.
30 joint pipe.
4 elbows.

*Inventory of furniture, &c*—Continued.

2 office stools.
4 kerosene lamps.
1 washbowl.
1 letter press.
1 ticket stamp.
2 telegraph instruments.
1 local battery.
1 table.
1 switch rope.
1 bedstead and bedding.
5 warehouse trucks.
1 iron bar.
250 lbs. iron bolts.
1 platform scale.

Salem:

1 large desk.
1 ticket case.
1 ticket dater.
1 telegraph instrument.
1 telegraph stand.
1 stool, 6 chairs, new.
3 chairs, old.
2 oil lamps, 2 lanterns.
2 oil cases.
1 warehouse truck.

482 Bangor station:

1 desk.
3 chairs.
1 stove, 9 lengths pipe.
1 sett scales.
1 truck.
1 ticket case, dating press.
1 lantern.
2 oil cans.
1 lamp outside.

Herseyiville station:

1 desk.
1 ticket case.
2 box stoves.
1 dating press.
2 chairs.
1 pinch bar.

Sparta station:

1 iron safe.
2 stoves, 12 lengths pipe, 2 elbows.
1 desk.
2 chairs.
2 settees.
2 ticket cases.
2 ticket stamps.
2 inkstand and stationery.
2 lamps.
2 oil cans.
3 w. h. trucks.
1 set scales.
1 pinch bar.

Greenfield station:

1 desk.
1 ticket case.
1 ticket stamp.
1 telegraph instrument.
1 telegraph table.
1 local battery and box.
1 bunk.
5 chairs.
2 stoves, 10 lengths pipe, 4 elbows.
3 pcs. zinc.
1 tank stove and pipe.
2 kerosene lamps.
1 lantern.
2 oil cans and filler.
1 set scales.
1 set trucks.
1 axe.
Stationery, &c.
2 brooms.

Tomah station:

1 large desk.
1 small desk.
1 ticket case.
2 chairs.
1 stool.
1 settee.
1 stove and pipe.

*Inventory of furniture, &c.*—Continued.

1 kerosene lamp.
1 lantern, outside.
1 set scales.
2 sets trucks.
Books and stationery.

Lisbon:

2 settees.
9 chairs.
4 tables.
3 stoves, pipes and zinc.
2 lamps.
483 1 desk.
2 tables.
2 lamps outside.
2 lanterns.
1 water pail and dipper.
2 ticket cases.
1 ticket stamp and dating press.
2 tables.
1 telegraph instrument.
1 bedstead and bedding.
16 y'ds carpeting.

Lemon Weir station:

1 set scales.
1 set trucks.
1 stove.
3 oil cans.
1 lantern.
1 ticket case.
1 ticket dating stamp, stationery, &c.

Manston station:

1 double desk.
1 ticket case.
1 ticket dating stamp.
6 chairs.
1 settee.
2 oil lamps.
2 kerosene lamps.
1 large outside lamp.
1 lantern.
2 oil cans.
1 lamp filler.
1 set platform scales.
1 set trucks.
1 set pinch bar.
1 hammer, axe, and spirit level.
1 red lantern.
1 stove, pipe and 16 lengths and 2 elbows.

Lyndon station:

1 desk.
1 ticket case.
1 dating press and type.
1 settee.
1 office stool.
4 chairs.
2 stoves, 11 joints pipe, 2 elbows.
2 lamps.
3 lanterns.
2 oil cans.
1 pail.
1 inkstand.
1 reflector lantern.
1 letter clip.
1 warehouse truck.
1 paper weight.

Kilbourn City:

2 desks.
4 stoves and pipe.
1 lounge.
2 ticket cases.
11 chairs.
2 stools.
1 table.
1 telegraph instrument, complete.
4 oil cans.
1 wash sink and pail.
1 ticket stamp, &c.
5 lamps.
3 lanterns.
2 lanterns reflectors.
1 setts curtains.
3 warehouse trucks.
2 sets scales.
1 crow bar.

484 *Exhibit No.* 8.

Filed May 6, 1863.

H. L. PALMER.

MILWAUKEE AND ST. PAUL RAILWAY,
*Chief Clerk's Office, Milwaukee, Wis., May* 4, 1865.

Statement rolling stock La Crosse & Mil. R. R. Co., June 11, 1860.

| | |
|---|---|
| Locomotives | 24 |
| Box cars, Nos. 2 to 444, less 6, used up | 216 |
| Flat cars, Nos. 1 to 239 | 120 |
| Baggage cars Nos. 1 to 6 | 6 |
| Mail and express cars, Nos. 1 to 3 | 3 |
| 2d class express cars, Nos. 1 to 2 | 2 |
| Passenger cars, Nos. 1 to 18 | 18 |

*Exhibit No.* 9.

Filed May 6, 1865.

H. L. PALMER.

MILWAUKEE AND ST. PAUL RAILWAY,
*Chief Clerk's Office, Milwaukee, Wis., May*, 4, 1865.

Statement rolling stock La Crosse & Mil. R. R. Co., June 11, 1863.

| | |
|---|---|
| Locomotives | 31 |
| Box cars, Nos. 2 to 900 | 450 |
| Flat cars, Nos. 1 to 239, (see note) | 77 |
| Caboose cars, Nos. 1 to 6 | 6 |
| Baggage cars, Nos. 1 to 9 | 9 |
| Passenger cars, Nos. 1 to 20, (see note) | 18 |

485 *Exhibit No.* 10.

Filed May 6, 1865.

H. L. PALMER.

MILWAUKEE AND ST. PAUL RAILWAY,
*Chief Clerk's Office, Milwaukee, Wis., May* 4, 1865.

Statement.

Flats, Nos. 91, 63, 33, 79, 111, 103, 45, 39, 67, 51, 81, 73, 37, 61, 55, 47, 133, 135, 75, 59, 113, 69, 1, 3, 5, 9, 11, 13, 41, 131, 125, 127, 123, 139, 17, 19, 115, 87, 53, 71, 65, 99, 43, used in construction of box cars, from June 11, 1860, to June 11, 1863.

Passenger No. 5 destroyed by fire.

Passenger No. 11 used up in service.

2d class, Nos. 1 and 2 converted into baggage.

*Exhibit No.* 11.

Filed May 6, 1865.

H. L. PALMER.

Statement rolling stock of the Milwaukee & St. Paul Railway Co., as follows:

Watertown division, when purchased:

| | |
|---|---|
| Locomotives | 7 |
| Passenger cars | 5 |
| Bag., mail, and ex. cars | 1 |
| Caboose | 2 |
| Freight box | 150 |
| Flat | 14 |
| Wood sawyers | 1 |

Horicon division, when purchased:

| | |
|---|---|
| Locomotives | 5 |
| Passenger cars | 3 |
| Bag., mail, and ex. cars | 2 |
| Caboose car | 1 |
| Freight box cars | 89 |
| Flat cars | 40 |

Wilwaukee & St. P. R'y Co., built and bought since June 13, '63:

| | |
|---|---|
| Locomotives | 1 |
| Passenger cars | 2 |
| Bag., mail, and ex. cars | 3 |
| Freight box | 122 |
| Flat | 20 |

486 *Exhibit No.* 13.

Filed May 8, 1865.

H. L. PALMER.

The original directors of the Milwaukee & St. Paul Railway Co., as per their articles of association, were Isaac Seymour, N. A. Cowdrey, Horace Galpen, David M. Hughes, Wm. Gould, Frederick P. James, Geo. Smith, Asahel Finch, and William H. White; David M. Hughes, president.

At a meeting of the directors held June 8th, 1863, the following gentlemen were elected directors, viz:

Alexander Mitchell, Russell Sage, Geo. W. Rogers, and Selah Chamberlain.

At a meeting of the directors held June 25th, 1863, Wm. H. White resigned his position as director, and Alfred Noxen was elected to fill the vacancy created thereby.

At a meeting of the directors Nov. 12, 1863, Washington Hunt was elected a director to fill the vacancy occasioned by the decease of Isaac Seymour.

At a meeting of the directors held July 1st, '64, Russell Sage was elected president of the company to fill the vacancy occasioned by the resignation of David M. Hughes.

At a meeting of the directors held Nov. 11, 1864, Walter S. Gurnee was elected as director to fill the vacancy occasioned by the resignation of William Gould.

The foregoing are correct extracts from the records of the directors' meetings of the Milwaukee & St. Paul Railway Co.

Milwaukee, May 8, 1865.

A. CARY, *Sec'y.*

The present directors are as follows:

Russell Sage, president.
D. M. Hughes.
487 N. A. Cowdy.
Asahel Finch.
Horace Galpin.
F. P. James.
Alex. Mitchell.
Geo. W. Rogers.
S. Chamberlain.
Alfred Noxon.
Geo. Smith.
Washington Hunt.
Walter S. Gurnee.

*Exhibit No.* 22.

Filed May 10, 1865.

H. L. PALMER.

Statement showing cost of repairs of rolling stocks, eastern and western division, June 30, '64, to Sept. 1, '64; Mil. & St. P. R'y and eastern division, Sept. 1, 1864, to Mar. 1, '65.

| | | |
|---|---|---|
| Repairs.—Main line, June 30, '64 to Sept. 1, '64: | | |
| Locomotives | | $17,583 08 |
| Cars | | 19,512 55 |
| Total | | 37,095 63 |
| Repairs.—Mil. & St. Paul railway and eastern division, Sept. 1, '64, to March 1, '65: | | |
| Locomotives | | $82,360 27 |
| Cars | | 116,214 96 |
| Total repairs | | 198,575 23 |
| Total cost repairs, June 30. '64, to Mar. 1, 1865 | | 235,670 86 |
| Deduct amount charged eastern division as their prop'n of above for same period: | | |
| Locomotives | $10,569 36 | |
| Cars | 16,280 87 | |
| Total repairs eastern div'n | | 26,850 23 |
| | | 208,820 63 |

488 *Exhibit No.* 24.

U. S. circuit court, April term, 1864.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company, Selah Chamberlain, and others.

*Opinion by Miller, district judge.*

A petition is presented to this court in behalf of the Milwaukee and Minnesota Railroad Company, praying an order to put said company into possession of the eastern division of the La Crosse and Milwaukee railroad, covered by the mortgage to complainants, upon paying the amount of interest due. The interest is not paid nor tendered by the company.

Selah Chamberlain was in possession of the railroad under a lease from the La Crosse and Milwaukee company, when the mortgage was made by said company to Barnes as trustee, under which the Milwaukee and Minnesota company claims title; and he was removed from such possession by these complainants under their mortgage, or by proceedings under this bill, or the bill of Sebra Howard, but it is not important at this time under which.

Chamberlain and the Minnesota company were made defendants in this bill as encumbrancers or owners. Chamberlain answered, setting up his lease, and also his judgment against the La Crosse company for over six hundred thousand dollars, and claiming to be paid out of the proceeds of sale of the mortgaged premises. The Minnesota company did not answer the bill, but let it be taken as confessed.

The district court, on the petition of John S. Rockwell and A. Fleming, stockholders of the Minnesota company, charging said company with fraud of their interests for not appearing and answering the bill in this case, and praying leave to answer in the name of the Minnesota company, allowed them to file such answers, from a desire to discharge a faithful duty to all parties, and to extend to them the privilege of a full hearing. Those answers made the principal defence, in which the amount claimed by the bill was reduced one half.

The Minnesota company was organized in pursuance of a sale in pais to foreclose the Barnes mortgage. Its title is the same in law as if the La Crosse company had conveyed to it, subject to prior encumbrances, during the pendency of this bill. It is only entitled to possession as purchaser of the equity of redemption, subject to prior encumbrances. It acquired no right by a decree or judgment of a court. Has it any more right to possession than the La Crosse company would have? Chamberlain claims the right to contest the titl of the Minnesota company, and that company has a right to conte Chamberlain's lien.

489 These matters should be adjudicated upon pleadings and

proofs admitting an appeal. On this petition there is neither an appeal nor a certificate of division of opinion, to the Supreme Court. The Minnesota company contested the consideration of Chamberlain's lien as set up by his answer, and took testimony for several months before the masters appointed in this case, who reported about four hundred thousand dollars in his favor. To enable the district court to decide this contest between these two defendants according to equity practice, the Minnesota company were allowed to file a bill against Chamberlain for that purpose, which bill I understand has been discontinued. Unless in a clear case, the court cannot put into possession a purchaser in pais of an equity of redemption subject to prior encumbrances disputing the legality of the purchase.

The bill in the case of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company and others, was in aid of an execution levied to remove the encumbrance of Chamberlain's lease and judgment. Whether the decree annulling said lease and mortgage was strictly correct or not, it was responsive to the prayer of the bill and had relation to the bill. It should not, I think, have a greater effect than the bill prayed for; that is, to remove the encumbrance from the way of the execution levied: But I think the company cannot on this petition preclude Chamberlain from setting up his lease and judgment. He has a right to have his claim tried in an adverse suit, between himself and the Minnesota company, either before the sale of the mortgaged property, or for the surplus after the sale. Thus far, for this purpose, every opportunity has been given by the district court to this company and its stockholders. We cannot judicially decide on this petition for possession that Chamberlain forfeited his lease. The Supreme Court did not pass upon Chamberlain's claim in its opinion in this case.

The first appointment of a receiver was made on a judgment creditor's bill of Sebra Howard against the La Crosse company. The same receiver was subsequently appointed in the case of these complainants. The mortgage of complainants being prior in date to Howard's judgment, the orders made from time to time were made in this case. The receiver's monthly reports are filled in both cases. Howard's judgment in the district court was founded on the judgment record from the circuit court of Milwaukee county, whereby it appears that the judgment in that court was rendered on the first day of May, 1858, for a sum exceeding twenty-five thousand dollars. The judgment in the State court was prior to the mortgage to Barnes. The judgment in the district court was subsequent. The Supreme Court in passing on the judgments against the La Crosse company as liens considered the Howard judgment subsequent in lien to the Barnes mortgage, from an imperfect statement of the judgments in the record before them. They did not pass on the question whether the lien of the Howard judgment should exist from the date of the judgment in the State courts or the district court.

As I understand it, the record before them not containing the evidence of the foundation of the judgment in the district court, that

question remains open. Suits on judgment, I think, do not extinguish their liens. They were the common law manner of reviving judgments. The revival whether by action or scire facias has relation to the original judgment. Under an execution issued on
490 the judgment in the State court, property was sold to the amount of eleven thousand dollars; but no sale being allowed under an execution on a judgment at law of a railroad and its appurtenances, the remedy in the Howard judgment was by a judgment creditor's bill. And Howard is entitled to retain that bill and continue the receiver until the property of the judgment debtor is exhausted by legal proceedings, or the judgment is paid. If the Minnesota company choose, they can by answer contest the lien of the judgment, if they are a party defendant; and if not, the court will permit them to become a party and make the defence. Howard is not now here in a position to meet this question on the petition for possession.

We cannot know judicially that the property described in the mortgage of the complainants, subject to prior mortgages to a large amount, is an adequate security for the accrued and accruing interest on this debt of one million of dollars, without satisfactory evidence, and until the receiver files his full account. The revenues for the last year appear large, but I think it will appear that necessary expenditures and disbursements leave not large balances. Until judicially satisfied, from the receiver's accounts, of the adequacy of the security, the receiver should not be discharged, unless he has wilfully or negligently mismanaged the estate. A rule will be made upon the receiver to file a continuous monthly account of receipts and disbursements from the time of his appointment.

I am anxious that the necessity for retaining the receiver should not exist for a day. I wish to have him discharged as soon as a due regard to the rights of the public and the parties will allow of it.

The first duty of the court is to secure the interests of the public, under the grant of the charter to the La Crosse company. The second duty is to protect the rights of the lien creditors and the parties litigant. The receiver was appointed for these two purposes.

For this purpose the orders of the 12th of June, 1863, in this case and in the Howard case, modifying the original orders, appointing the receiver, were made. The Milwaukee and St. Paul company were allowed by those last orders to operate temporarily the eastern division of the road in connection with the western division, of which they were owners, for the sake of economy in operating the road, to secure the use of all the rolling stock on the whole line, and to restrain the St. Paul company from diverting trade and travel from the eastern division. It was known that the St. Paul company were about to connect their division from Portage City to the Watertown road, and thence to Milwaukee, which might affect the eastern division.

The order allowing that company to operate the eastern division subject to the control of the court and the supervision of the re-
them ceiver, and under heavy bonds with adequate security, prohibited them from putting a car on their extension from Portage or on any other

road east of that point. I considered it a proper duty for the public and the parties to secure the use of a continuous route, according to the charter, without interruption or deviation of trade or travel, between the termini of the road.

There is a disposition not to discriminate between these orders, for the temporary and conditional operation of the road by the St. Paul company, and an order for the absolute and adverse possession of the Minnesota company.

491 The order of the twelfth of June in the Howard case was made in the circuit court where the bill was pending; and in this case in the district court. The order of the district court in this case was made under the universal belief that according to the opinion of the Supreme Court the record remained in the district court for its proceedings as a final decree, under the act of March 3d, 1863. The Supreme Court having since announced that the record should have been transferred to the circuit court under the act of July 15, 1862, the order of the district court is to be considered of no validity, and it is my duty to order it rescinded. For the reasons here given the orders of the 12th of June, 1863, will be rescinded, and the eastern division and appurtenances restored to the receiver under his original appointment.

492 Circuit court of the United States for the district of Wisconsin, in equity.

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| MILWAUKEE AND MINNESOTA RAILROAD COMPANY *vs.* JAMES T. SOUTTER *et al.*, survivors, and others. | Suit by supplem'l bill. |
| JAMES T. SOUTTER *et al.*, survivors, *vs.* THE MILWAUKEE AND MINNESOTA RAILROAD Company. | Cross bill. |

1. The parties hereto stipulated that this cause, supplemental bill and cross bill, shall be considered as set for hearing at the April term, 1866, not to be taken up until the second week of said term.

2. Subject to all objections and exceptions as to its relevancy and competency as testimony in this cause, either party may read on the hearing of this cause the testimony taken in a certain cause in this court in favor of Frederick P. James and others, against the La Crosse and Milwaukee Railroad Company and the Milwaukee and Minnesota Railroad Company, which cause has been heard in this court and is now depending on appeal in the Supreme Court of the United States; that is, this stipulation is to waive the necessity and save the expense of retaking said testimony, if the court shall be of opinion that it is competent testimony in this cause; but no objection is waived which might or could be taken thereto, or to any part thereof, had the same been taken in this cause in the same manner as the same was taken in that cause.

3. It is further stipulated that all the exhibits attached to the supplemental bill, the answers thereto, and to the cross bill, and to the answer to said cross bill, may be read and shall be considered as read in evidence on the hearing of this cause, with the same effect
493 as though their respective originals were produced and read in evidence, and so far as said exhibits are extracts from papers or records in other causes, no objection shall be made that exemplifications of the records in said causes are not produced; and either party may, on the hearing of this cause, read any other or further extracts from, or part or parts of, the proceedings in any other cause or causes which may be material without producing an exemplification of such records, but no objection is hereby waived on the ground that said testimony is immaterial or irrelevant, which might or could be taken thereto, had full and duly authenticated exemplifications of said records and proceedings been produced and offered in evidence. This clause shall be held to include the receiver's reports filed in any of the causes relating to the La Crosse and Milwaukee railroad.

4. If either party shall desire, on the hearing of this cause, to read the record of any cause, or any part of the record of any cause, material in this cause, the printed copies of such record, printed for the Supreme Court therein, shall be deemed as equivalent to an exemplification, and shall not be objected to on the ground that it is not a duly certified exemplification, but shall be subject to all the objections and exceptions that might be taken to such exemplification.

5. Either party may take oral testimony in this cause before an examiner of said court, on two hours' notice, from the 5th to the 14th day of April, A. D. 1866, at Milwaukee in said district.

6. The Milwaukee and Minnesota Railroad Company may, on the first day of April term, A. D. 1866, or at any time before that time, file a second supplemental bill in this cause, bringing down the history of the railroad litigation and other facts deemed material, accruing or which have accrued between the filing of the supplemental bill in this cause and the day of filing said second supplemental bill, and the same shall be answered immediately, and the hearing thereon shall take place at the same time with the hearing of this cause, and
494 be deemed a part thereof, and shall not have the effect to delay the hearing of this cause.

7. Either party may read in evidence any opinion of the judge or court in any cause heretofore pending or now pending in this court, or the district court of the United States for this district, in relation to the La Crosse and Milwaukee railroad, subject to objection as to its relevancy or materiality, and the printed copies thereof shall be considered as the original.

8. Nothing in this stipulation shall be deemed to waive the motion heretofore filed in this cause to dismiss or strike off said cross bill, nor to waive any objection whatever that may be taken thereto, the Milwaukee and Minnesota Railroad Company claiming that the case thereby made is not the proper subject of a cross bill in this cause.

9. The Milwaukee and Minnesota Railroad Company may, on or

before the first day of the next April term of said court, amend the prayer of said supplemental bill as it shall be advised.

MAT. H. CARPENTER,
*Sol. for Mil. and Minn. R.R. Co.*
JOHN W. CARY,
*Solicitor, &c.*

And the said Milwaukee and Minnesota Railroad Company read in evidence under said stipulation all the exhibits attached to said first supplemental bill, the answer of said company to the cross bill by said Soutter and Knapp, the exhibits attached to the second supplemental bill of complaint of said company; and all of said exhibits were admitted by said parties to be true copies of their respective originals, and the parties extended orally the above stipulation as to the exhibits attached to said second supplemental bill, not included in said written stipulation.

495 The said Milwaukee and Minnesota Railroad Company also read in evidence, under the said stipulation, from records in other cases the following documents, viz:

1. Order of June 12, 1863, in land grant cause, as follows:

In district court.

GREEN C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp, trustees,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

JUNE 12, 1863.

On consideration of the said petition of the Milwaukee and St. Paul Railway Company and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee and St. Paul Railway Company all and singular the railroad between the city of La Crosse and Portage City, its road bed and track, with its depots, station houses, engine houses, and all other property belonging to said railroad between the said points, and the forty box cars mentioned and described in the decree. And also the share or proportion of the rolling stock and personal property purchased by the receiver as mentioned in the decree. And also subject to other or previous liens or claims, the possession of the rolling stock on hand when the receiver took the same under the order of the court.

And it is further ordered by the court that the said receiver be, and hereby is, discharged as such from the management and control of the said western division of said road under appointment in this case, subject, however, to the final settlement of his accounts, and subject to the orders made or to be made in this case and in the other cases in which he was appointed or may hereafter be appointed.

2. Order of June 12, 1863, in eastern division case.
(Copy attached to supplemental bill.)

3. Order of June 12, 1863, in the Howard case, as follows:

496 In circuit court.

SEBRE HOWARD
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

JUNE 12, 1863.

A petition in writing of the Milwaukee and St. Paul Railway Company having been presented to the district court of the United States for this district, and filed in that court in the case of Green C. Bronson, James T. Soutter, and Shepherd Knapp against the La Crosse and Milwaukee Railroad Company and others, setting forth in substance that in pursuance of a decree of said court in that case the western division of the La Crosse and Milwaukee railroad between La Crosse and Portage City has been sold, and that said sale was confirmed and perfected; and that said Milwaukee and St. Paul Railway Company is a corporation organized under the laws of the State as grantees under said sale, and praying to be allowed to operate the whole line of road between La Crosse and Milwaukee as a continuous road as directed and authorized by the act incorporating the La Crosse and Milwaukee Railroad Company. And the said petition having been argued by Messrs. Cary & Lynde in support thereof, and by Messrs. Hubbell & Carpenter on behalf of this complainant, and the Milwaukee and Minnesota Railroad Company in opposition thereto. And the court being satisfied that the policy of the State and the interests of the public and of the creditors of the La Crosse and Milwaukee Railroad Company require that the court should not continue further to operate by its receiver any part of the said railroad between La Crosse and Milwaukee, but that the whole line of said road should be operated without interruption or embarrassment by a responsible corporation. And the court being satisfied that its possession and control by a receiver of the eastern division between Portage City and Milwaukee might affect the rights of the public and embarrass the free and proper operation of the whole road as required by the original grant or charter, and also prejudice the interests of creditors of the La Crosse and Milwaukee Railroad Company. And it being
497 represented to the court that persons interested in the Milwaukee and St. Paul Railway Company own or control bonds included in the mortgage to said Green C. Bronson, James T. Soutter, and Shepherd Knapp, and the subject of that suit, to the amount of four hundred and seventy-eight thousand dollars, being nearly one-half of the whole amount of said mortgage.

It is therefore ordered by the court that the order appointing the receiver in this cause be modified in manner following, subject to any further or other order rescinding, altering, or modifying this order now here made:

That the receiver let the said Milwaukee and St. Paul Railway Company into possession of the eastern division of the La Crosse and

Milwaukee railroad between Portage City and Milwaukee, with its appurtenances and property, and rolling stock thereto belonging; and that the said Milwaukee and St. Paul Railway Company, subject to the further order or orders of the court, operate said eastern division of said railroad, in connection with the said western division thereof, so that one continuous line of railroad between La Crosse and Milwaukee may be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Company without hindrance, interruption, or dissention, the same as if the whole line of road continued to be in one company in pursuance of said charter, and not otherwise. And it is further ordered by the court that the said Milwaukee and St. Paul Railway Company shall at all times allow and permit the receiver, or such other person as may be at any time appointed for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Company, and of its board of directors, in relation to the business and operation of the whole line of road. And that the said railway company shall, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the receiver or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all the necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of the net revenues of the said railroad.

498 And that the said receiver make monthly returns as heretofore of his accounts into court, and disburse the moneys by him received from time to time in the payment of liens and debts of the said La Crosse and Milwaukee Railroad Company according to their priorities and equities. And it is further ordered by the court, that before the said Milwaukee and St. Paul Railway Company be permitted to have possession under this order, the said company, by its constituted officers, shall enter into bond to the United States for the use and benefit of all interested, with sureties to be approved by the court, in the penalty of one hundred thousand dollars, conditioned that said company will faithfully comply with this order of court this day made, and any subsequent order relating to the operation and management of the said railroad between La Crosse and Milwaukee, and will keep said road, and the rolling stock and property, in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La Crosse and Milwaukee Railroad Company, and shall make monthly returns, and pay over the net revenues of said road according to this order. And that the receiver be discharged as such in relation to the western division, subject to the settlement of his accounts.

*Order of court rescinding order of June* 12, 1863.

APRIL 28, 1864.

This day ordered by the court, that the order of the 12th June, 1863, modifying the order appointing the receiver, whereby the Milwaukee and St. Paul Railway Company were placed in possession of the eastern division of the road, be, and the same is hereby, rescinded, and that the said Milwaukee and St. Paul Railway Company return to the receiver the said road and appurtenances, and rolling stock received under said order, and all property relating to the said eastern division.

And the said Milwaukee and Minnesota Railroad Company also read in evidence the order of June 12, 1863, in second mortgage case, and the order of April 28, 1864, in same case, as follows, to wit:

499 *Order June* 12, 1863, *in eastern division.*

Foreclosure cause, putting Milwaukee and St. Paul Railway Company in possession, and order of April 28th, 1864, vacating the same.

United States district court.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

JUNE 12TH, 1863.

A petition in writing of the Milwaukee & St. Paul Railway Company having been presented to the court and filed in the case of Greene C. Bronson, James T. Soutter, and Shepherd Knapp against the La Crosse and Milwaukee Railroad Co. and others, setting forth, in substance that in pursuance of a decree of this court in that case, the western division of the La Crosse and Milwaukee rail-
500 road between La Crosse and Portage City has been sold, and that said sale was confirmed and perfected. And that said Milwaukee & St. Paul Railway Co. is a corporation organized under the laws of the State, as granted under said sale, and praying to be allowed to operate whole line of road between La Crosse and Milwaukee as a continuous road, as directed and authorized by the act incorporating the La Crosse & Milwaukee Railroad Co.

And the said petition having been argued by Messrs. Cary and Lynde in support thereof, and by Messrs. Hubbell and Carpenter on behalf of Charles Howard, a judgment creditor of the La Crosse & Milwaukee Railroad Co., who is prosecuting a judgment creditor's bill, and of the Milwaukee & Minnesota Co. in opposition thereto. And the court being satisfied that the policy of the State and the interests of the public, and of the creditors of the La Crosse & Milwaukee Railroad Co., require that the court should not continue further to operate by its receiver any part of the said railroad between La Crosse and Milwaukee, but that the whole line of said road should be operated without interruption or embarassment by a responsible corporation. And the court being satisfied that its posses-

sion and control by a receiver of the eastern division, between Portage City and Milwaukee, might affect the rights of the public, and embarrass the free and proper operation of the whole road as required by the original grant of charter, and also prejudice the interests of creditors of the La Crosse and Milwaukee Railroad Co. And it being represented to the court that persons interested in the Milwaukee & St. Paul Railroad Co. own or control bonds included in the mortgage to these complainants, and the subject of this suit, to the amount of four hundred and seventy-eight thousand dollars, being nearly one-half of the whole amount of said mortgage.

It is thereupon ordered by the court that the order appointing a receiver in the case be modified in the manner following, subject to any further or other order rescinding, altering, or modifying this order now here made: That the receiver let the said Milwaukee and St. Paul Railway Co. into the possession of the eastern division of the La Crosse and Milwaukee Railroad from Portage City to Milwaukee, with the appurtenances and property and rolling stock thereto belonging. And that the said Milwaukee and St. Paul Railway Co., subject to the further order or orders of the said court, operate said eastern division of said railroad in connection with the said
501 western division thereof, so that one continuous line of railroad between La Crosse and Milwaukee may be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Co., without hindrance, interruption or diversion, the same as if the whole line of road continued to be in one company in pursuance of said charter, and not otherwise.

And it is further ordered by the court that the said Millwaukee and St. Paul Railway Co. shall at all times allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Co., and of its board of directors, in relation to the business and operation of the whole line of road, and that the said railway co. shall, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division, of the net revenues of the said railroad. And that the said receiver make monthly returns as heretofore of his accounts into court, and disburse the moneys by him received from time to time in the payment of liens and debts of the said La Crosse and Milwaukee Railroad Co., according to their priorities and equities.

And it is further ordered by the court that before the said Milwaukee and St. Paul Railway Co. be permitted to have possession under this order, the said company, by its constituted officers, shall enter into bond to the United States for the use and benefit of all interested, with sureties to be approved by the court, in the penalty of one hun-

dred thousand dollars, conditioned that the said company will faithfully comply with this order of court this day made, and any subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and will keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La Crosse and Milwaukee Railroad Co., and shall make monthly returns and pay over the net revenues of said road according to this order.

502 GREENE C. BRONSON and JAMES T. SOUTTER *vs.* THE LA CROSSE AND MILWAUKEE RAILWAY Company and others.

APRIL 28, 1864.

This day ordered by the court that the order of the 12th of June, 1863, modifying the order appointing the receiver, whereby the Milwaukee and St. Paul Railway Company were placed in possession of the eastern division of the road, be, and the same is hereby, rescinded; and that the Milwaukee and St. Paul Railway Company return to the receiver the said road and appurtenances and rolling stock secured under said order, and all property relating to said eastern division.

503 Know all men by these presents, that the Milwaukee and St. Paul Railway Company, as principal, and David M. Hughes, Alexander Mitchell, Russell Sage, Fred. P. James, N. A. Cowdrey, Horace Galpin, William H. White, George W. Rodgers, Selah Chamberlain and Asahel Finch, as sureties, are held and firmly bound unto, the United States of America, for the use and benefit of all interested herein, in the penal sum of one hundred thousand dollars, lawful money of the United States of America, to be paid to the said obligee, its assigns, or any party interested herein, to which payment, well and truly to be made to the said obligee, the said obligors bind themselves, their heirs, executors, administrators, and assigns, firmly by these presents.

Sealed with our seals, and dated this twelfth day of June, in the year one thousand eight hundred and sixty-three.

The condition of this obligation is such, that whereas the district court of the United States for the district of Wisconsin, in a certain case therein pending, wherein Greene C. Bronson, James T. Soutter, and Shepherd Knapp are complainants, and the La Crosse and Milwaukee Railroad Company and others are defendants, made a certain order, bearing date on the twelfth day of June, A. D. 1863, directing the receiver to let the said Milwaukee and St. Paul Railway Company into possession of the eastern division of the La Crosse and Milwaukee railroad, between Portage City and Milwaukee, with its appurtenances, property, and rolling stock belonging thereto, and directing said Milwaukee and St. Paul Railway Company, subject to the further order or orders of said district court, to operate said eastern division of said railroad in connection with the western divi-

sion thereof, from Portage City to La Crosse, so that one continuous line of railroad between La Crosse and Milwaukee might be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Company without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company, in pursuance of said charter, and not otherwise.

And further directing that the said Milwaukee and St. Paul Railway Company shall, at all times, allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, daily access and examination of the records, books, and papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Company, and of its board of directors, in relation to the business and operations of the whole line of road, and that the said railway company should, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of net revenues of the said board.

Now, therefore, if the said Milwaukee and St. Paul Railway Company shall faithfully comply with said order of said court, and all subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and shall keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La Crosse and Milwaukee Railroad Company, and shall make monthly returns, and pay over the net revenues the said road according to said order, then this obligation to be null and void, otherwise to remain in full force and virtue.

The Milwaukee and St. Paul Company—by its president:

[SEAL. ] D. M. HUGHES, *President.*
[SEAL. ] D. M. HUGHES,
[SEAL. ] AL'X MITCHELL,
[SEAL. ] GEO. W. ROGERS,
[SEAL. ] F. P. JAMES,
[SEAL. ] N. A. COWDRY,
[SEAL. ] RUSSELL SAGE,
[SEAL. ] SELAH CHAMBERLAIN,
[SEAL. ] HORACE GALPIN,
[SEAL. ] W. H. WHITE,
[SEAL. ] A. FINCH.

Signed, sealed, and delivered in presence of—
JOHN W. CARY.

RUSSELL SAGE, JR., *Secretary.*

JUNE 13, 1863.

This bond and the sureties approved by the court.

A. G. MILLER.

504 The Milwaukee and Minnesota Railroad Company further read in evidence exceptions filed by it in the land grant cause on the 2d day of May, 1863, to the report of sale by the marshal.—(See page 20 of this record.)

And also read in evidence the opinion of the district court attached to said exceptions as follows, to wit:

505 *Opinion of Judge Miller.*

In the district court of the United States for Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

An act of Congress entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State, approved June 3d, 1856," granted to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to St. Croix river or lake, between townships twenty-five and twenty-one, and from thence to the west end of Lake Superior and to Bayfield; and also from Fon du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land designated by odd numbers of six sections in width on each side of said road respectively, with the privilege to the State to have other lands selected in lieu of such as may be sold or presented before the line of road is definitely fixed; it is provided that the land granted shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever.

The act further directs that the lands granted to the State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid and no other, and shall be disposed of by said State only in the manner following: That a quantity of land not exceeding one hundred and twenty sections and included within a continuous length of twenty miles of road may be sold; and when the governor of the State shall certify to the Secretary of the Interior that any twenty continuous miles of railroad are completed, then another like quantity of land may be sold, and so on from time to time until said roads are completed, and if said roads are not completed within ten years, no further sales shall be made.

The act does not contemplate the issuing of a patent to the State. It conveys the fee of the land to the State, subject to the prescribed manner of disposition by the State. It is a higher evidence
506 of title as it is the direct grant of the fee which had been in the United States by the government itself, while the patent is only the acts of its ministerial officer.—(Grigrion *vs.* Astor, 2 Howard, 319, 344.) The State acquired title to the lands granted by the act, but could dispose of them only in the manner therein designated. The

State could not grant or convey a legal title in any manner inconsistent with the only mode directed by the grant. The lands are a gift to the State to aid the State in building railroads, subject to the restriction or limitation in the manner of their conveyance by the State, and to reversion to the United States if the roads are not completed within ten years.

The State legislature, by an act approved October 8, 1856, accepted the grant upon its terms, conditions, and restrictions, and by an act approved October 11, 1856, the State legislature granted the western division of the lands to the La Crosse and Milwaukee Railroad Company. The first section of this last act authorizes the La Crosse and Milwaukee Railroad Company to survey, locate, and complete railroads from Madison, and from Columbus by Portage City to the St. Croix river or lake, between townships twenty-five and twenty-one, and from thence to the west end of Lake Superior and to Bayfield. By the grant to the State the road is to commence at Madison or Columbus, and by this act it is to be commenced at both places; but Madison is designated as the point of commencement of the road, for the purpose of estimating and selecting the lands.

By section 4 of the State act, "for the purpose of aiding in the construction of said roads," all the interest and estate, present and prospective, of the State, in or to any and all lands granted by the government of the United States to the State, &c., together with all and singular the rights, privileges, and immunities conferred or intended to be conferred by the said act of Congress, are granted to the La Crosse and Milwaukee Railroad Company; *provided*, that the title to said lands shall vest in the said La Crosse and Milwaukee Railroad Company in the manner following: Whenever twenty continuous miles of the said road shall have been completed so as to admit of running regular trains on the same, the governor shall certify to the Secretary of the Interior the fact that twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said land shall vest in the said La Crosse and Milwaukee Railroad Company; and when a second twenty
507 continuous miles of said road shall have been completed, so as to admit of running regular trains on the same, the governor shall certify as above, and thereupon a further quantity of one hundred and twenty sections of said lands shall vest in said company, and so on from time to time until said roads are completed, and the governor is authorized to execute in the name of the State whenever the company, by virtue of this chapter, shall be entitled to any of the lands, a deed in fee simple to any or all the land which the company shall be entitled, and the company shall not sell any of the said lands until twenty miles of said road shall be completed, so as to admit of running regular trains of cars on the same; and so on from time to time, so that the sales of land by the company shall never exceed six sections of land to every mile of road so completed.

The title to the lands passed by the grant from the United States into the State of Wisconsin, with the restriction that the lands shall be disposed of by the State only in the manner that a quantity of land

not exceeding one hundred and twenty sections, within a continuous length of twenty miles of road may be sold, and when the governor shall certify to the Secretary of the Interior, that any continuous miles of road are completed, then another like quantity of lands may be sold. By the act of the State legislature, the title only passes from the State into the company upon a condition different from that of the grant. The act directs that whenever twenty continuous miles of road shall have been completed, so as to admit of running regular trains, the governor shall so certify, and then the title to two hundred and forty sections shall vest in the company. The act does not require the twenty continuous miles of road to be made within the one hundred and twenty sections of land, as required by the grant, and on the completion of the first twenty miles, a quantity of land is to pass to the company double of that permitted by the grant to be sold. The grant was not intended to build railroads for the State, but to aid the State in making railroads; and it intended, by the restriction in passing the title from the State, in such manner as to require the road made through the lands, to be made with the aid of the lands through which the road was located, both for the opening up and improvement of that portion of the State, and to secure to the United States double the minimum price of even sections within the limits of the grant.

The ninth section of the State act provides that the railroad
508 company shall be capable in law of taking and holding the lands granted to the State, which shall be conveyed to the company by the act or deed, or by operation of law, and also mortgage or otherwise dispose of all their right, title, or interest, claims or demands, of, in, and to the lands granted to the company by the act, or in any other estate, real or personal, of which they may be seized at the time of the execution of the mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper. The power here conferred on the company to mortgage any estate subsequenly acquired is applicable to such property as the company may acquire outside of the grant.

By keeping the conditions of the grant in view, it will appear that the State had no power to mortgage in advance of title, and consequently she could not confer it upon the company. The power to mortgage is embraced in the power to sell and convey, but it cannot exceed the restriction or condition of the power granted.

The La Crosse and Milwaukee Railroad Company, on the 31st day of December, 1856, executed and delivered to Green C. Bronson, James T. Soutter, and Shepherd Knapp, as trustees, a mortgage or deed of trust, reciting therein at length the acts of Congress and of the State legislature, to secure a sum of money not exceeding ten million of dollars, in bonds of $100 each, which they had concluded to borrow for the purpose of constructing their road from Madison, by way of Portage City, to St. Croix river or lake. By the deed a lien was intended to be created on the road and road bed and appurtenances, and it was also intended to grant, bargain, and sell all and singular the lands granted or intended to be granted to the company

by the acts of Congress and of the legislature. It does not appear that at the date of the deed the company had acquired any title or right to a title to any portion of the lands.

It appears that on the 28th of December, 1857, Coles Bushford, the then governor of the State, transmitted his official certificate to the Secretary of the Interior, "that forty continuous miles of the road which the La Crosse and Milwaukee Railroad Company is authorized and required to construct, by the provisions of the acts &c., extending from the point of intersection
509 of the road described in the said acts with the section division of the La Crosse and Milwaukee Railroad at Portage City westwardly to a point on the line of said road, &c., have been completed as required, &c. The governor did not certify that any portion of the road so certified to have been made run through any portion of the lands granted to the State. It cannot, I apprehend, be claimed that the lands through which that forty miles of road run, being chiefly sold by the government, the company, under the grant, could select other lands in lieu of said lands so sold. The provision, I presume, was inserted in the grant to enable the State to select the lands in lieu of such as may be sold by the government or preempted after the date of the grant, and before the several sections granted should be designated by the government, according to the actual location of the road. It is understood that the several sections have not been designated by the Commissioner of the General Land Office, and it appears that the governor has refused to make patents or deeds to the company for any portion of the land.

We know that the functions of the La Crosse and Milwaukee Railroad Company are suspended. If the company should reorganize the legislature may modify the act by making it conform to the grant.

If it should not reorganize, legislation may be necessary in relation to the disposition of the grant by another company or by the State. The act of the State does not confer any interest in the grant in a successor of the La Crosse and Milwaukee Railroad Company.

I do not intend by these remarks to convey the idea that bondholders under the deed of trust may not possibly have some equities.

These remarks are made in reference to the several petitions for an order to adjourn the sale of the lands under the decree in this case. The real condition of the title to the lands had not been specifically brought to my notice when the decree was made; but even if it had, I presume the decree would have to follow the description of the mortgaged premises. The decree ordered the lands to be sold by the general description, and according to the mortgage. This is made an objection to the sale; but that objection is met by the act which directs that "within five years after the title shall have
510 become vested in the company, the lands, if any shall remain unsold, shall be offered for sale in limited quantities to actual settlers."

The decree ordered the lands to be first sold, and afterwards the railroad and appurtenances, if the sale of the lands did not produce the amount of interest due and payable on the bonds. The court had no

power to change or modify the decree, but by the consent of all the parties, which is not probable, as they are excessively litigious. If the lands should be bid off at a nominal amount, the court can, on the motion of any of the petitioners, set the sale aside. I think that under the circumstances this course will best subserve the interests of all the parties, so that the legislature may correct former legislation, and provide for carrying out the grant by some company. The probability is that the portion of the road mortgaged may sell for enough to extinguish the debt.

The petitions will not be acted upon by ordering the sale adjourned. A constant effort has been made by the court that the whole road should be sold at the same time, in hopes that it may pass into the hands of a responsible company for the interest of the public, but I fear from the present situation of affairs that the effort was in vain.

And the said Milwaukee and Minnesota Railroad Company further read in evidence the several orders of reference to H. L. Palmer, esq., auditor, in the second mortgage foreclosure suit, as follows, to wit:

*First order of reference of April* 28, 1864.

This day ordered by the court that the receiver file in this court a continuous monthly account of his receipts and disbursements as receiver from the time of his appointment, including the receipts and disbursements of the Milwaukee and St. Paul Railway Company from the 12th of June, 1863, by the 1st day of June next, and that any person interested may examine the same and file exceptions thereto, and that H. L. Palmer, esquire, be and is appointed an auditor to report on the same to the next term of this court.

511

*Second order modifying first order.*

OCTOBER 8, 1864.

It is ordered by the court, now here, that the order made in this cause on the 28th day of April, A. D. 1864, requiring the receiver to render account, and referring it to H. L. Palmer, auditor, to report on the same to the present term of this court, be, and the same is hereby, modified as follows:

Ordered, that Hans Crocker, receiver, file in the office of the clerk of this court, on or before the 20th day of November next, a detailed account of his receipts and disbursements as receiver, from the 1st day of June to the 31st day of October, 1864, inclusive; that any of the parties to this cause may, within ten days after such account shall be filed, file exceptions thereto; that such account and the exceptions thereto be referred to the auditor appointed in the said order of the 28th day of April, 1864, to examine and report thereon, in like manner as upon the accounts and exceptions referred by said former order; that the auditor ascertain and report what should

be charged for the use of rolling stock formerly used on said railroad, as a part of the accounts referred to him; that the auditor ascertain and report what sum should be allowed to the receiver for his services and expenses as receiver, and whether the receiver is subject to any and what contingent liabilities growing out of his receivership, and the amount and nature of each; and that said auditor report thereon with all convenient speed, and by the first Monday of March, A. D, 1865; that the receiver also file with the clerk of this court, on or before the 20th day of March, 1865, an account of his receipts and disbursements as receiver, from the 1st of October, 1864, to the last day of February, 1865, both inclusive; that any of the parties to this suit may, within five days after such account shall be filed, file exceptions thereto, and that such last-mentioned accounts and exceptions thereto be referred to H. L. Palmer, auditor, appointed as aforesaid, to examine and report thereon by the first day of the next April term of this court.

512 *3d order of reference.*

APRIL 17, 1865.

This day came the parties by their counsel, and it is ordered by the court, that the order in this cause heretofore made referring certain matters to H. L. Palmer, esq., be so modified that the said Palmer make report thereto on or before the first day of June next; that any of the parties interested may except to said reports, or either of them, within fifteen days thereafter, and said report and exceptions shall stand for hearing at the first sitting day of this court thereafter, or as soon thereafter as counsel can be heard, and that the testimony before said Palmer shall be closed by the tenth day of May next.

*4th order of reference.*

JULY 11, 1865.

This day came the Milwaukee & Minnesota Railroad Company by Matt. H. Carpenter, its solicitor, and on its motion, it is ordered that said company have leave to file an additional exception to the report of the auditor on the receiver's accounts in regard to the use and repairs of rolling stock belonging to the eastern division, used on the western division, and came said company and filed said additional exception.

Whereupon, on motion of Matt. H. Carpenter, solicitor for the Milwaukee & Minnesota Railroad Company, it is ordered that H. L. Palmer, esq., auditor in this cause, make written report to this court in regard to matters embraced in the additional or 12th exception filed by said company to the said auditor's report on the receiver's accounts; and state and report whether any allowance has been made in and by his said report for the use of rolling stock belonging to the eastern division used on the western division or other roads operated by the Milwaukee & St. Paul Railway Company, from the first day of

September, 1864, to the 28th day of February, 1865, and if not, report what sum should be allowed therefor; and ordered that said 12th exception be referred and transmitted to said auditor, to be returned by him to this court with his additional report thereon.

513 *5th order.*

JULY 18, 1865.

This day, on motion of Matt. H. Carpenter, solicitor for the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, ordered that Hans Crocker, receiver in this cause, file, on or before the 15th day of August, an account of all receipts and disbursements by him or his servants from the 28th day of February last to the first day of August next; and that the same be referred to H. L. Palmer, auditor, to hear the parties interested and their exceptions to said account, and to report thereon to this court on the first Monday of September next, and that said auditor also report what sums should be charged and credited for use and repairs of rolling stock, upon the same basis as that adopted in his former report.

*6th order.*

APRIL 13, 1866.

This day came the receiver by his counsel, and filed his report showing the amount of money in his hands as receiver.

And came the Milwaukee and Minnesota Railroad Company, by its counsel, and filed its exceptions to said report, and on its motion, ordered that the statement of the receiver in this cause, and the exceptions thereto, be referred to H. L. Palmer, esq., auditor, with directions to examine the same, and the proofs and vouchers offered in support of said statement and said exceptions, and report thereon by Monday morning next.

*7th order.*

APRIL 14, 1866.

This day, on motion, ordered that the auditor in this cause ascertain and report, on Monday next, what shall be charged for the use of rolling stock on the same basis as heretofore, during the time covered by the receiver's account now being examined by said auditor.

The said Milwaukee and Minnesota Railroad Company further read in evidence the supplemental land grant mortgage (so-called) dated January 28, 1858.

514 An indenture, made the twenty-eighth day of January, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the State of Wisconsin, of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, all of the city of New York, as trustees, as hereinafter mentioned, of the second part.

Whereas by a certain deed of trust, bearing date the 31st day of

December, one thousand eight hundred and fifty-six, made and executed between the parties hereto, the said parties of the first part, after reciting their intention to borrow a sum of money, not exceeding ten millions of dollars, for the purpose of constructing their railroad, and to issue their bonds for the repayment of the money so borrowed, to an amount not exceeding that sum, did, for the purpose of securing their bonds to the amount aforesaid so proposed to be issued, grant and convey to the said parties of the second part, as trustees, all and singular the railroad of said company, constructed and to be constructed from Madison, by way of Portage City, to the St. Croix river or lake, and from Portage City to La Crosse, and the appurtenances thereof, and all the lands and premises constituting or which should thereafter constitute the site of the roadway of said company, and the turn-outs, depots, buildings, and other appurtenances of said road, and the rolling stock, equipments, and other property which had been or should be provided for the said road; and likewise all the right and interest, whether present or prospective, of the said company in or to the lands granted by the United States in aid of the construction of said railroad, to which the said corporation was or might be or become entitled under and by virtue of the act of Congress and the act of the legislature of the State of Wisconsin, in said deed of trust recited: by which deed of trust provisions were made for the application of the property so conveyed in trust or mortgaged, or the proceeds of the same to the payment of the interest upon and the redemption of the principal of the bonds so proposed to be issued, in certain modes and upon certain terms and conditions in the said deed of trust specified as by reference to such deed of trust (which reference is hereby made with the like effect as if said deed and all the provisions thereof were here recited at large) will more fully appear.

And whereas the said La Crosse and Milwaukee Railroad Company have heretofore caused to be countersigned by the said trustees bonds under and secured or designed to be secured by the said deed of trust or mortgage, to the amount of two millions five hun-
515 dred thousand dollars, which have been, for the most part, issued and negotiated, and said company being now engaged in the construction and completion of that portion of the said road between Portage City and La Crosse, have ascertained that in order to complete said road to La Crosse, with the necessary turn-outs, stations, depots, buildings, bridges, and all other appurtenances, it will not be necessary to issue bonds under said deed of trust or mortgage to an amount exceeding in the whole four million of dollars, including those which have been already issued; and have accordingly resolved and determined that the issue of such bonds for that purpose shall be limited to that amount, and that no lien shall be created by the issue of bonds under said mortgage upon that portion of said road between Portage City and La Crosse, or upon the lands appurtenant to that section of said road, to an amount exceeding in the whole four millions of dollars; and have also resolved more fully and aptly to secure the said bonds issued and to be issued within such amount

of four millions of dollars, in the manner and to the effect herein provided and declares:

Now, this indenture witnesseth, that in consideration of the premises, and of one dollar to the said company in hand paid, the receipt whereof is hereby acknowledged, and in order to secure the said bonds, issued and to be issued, within the said amount of four millions of dollars, and to induce the future taking of said bonds, as well those heretofore issued as those hereafter to be issued by said company, the said La Crosse and Milwaukee Railroad Company have covenanted, granted, and agreed, and do hereby covenant, grant, and agree, to and with the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, as trustees as aforesaid, for and on behalf of all such persons and corporations as now are or hereafter shall become or be holders of any of the bonds within the amount of four million of dollars issued and to be issued, as hereinbefore recited, and to and with the successors of said trustees, that no bonds exceeding in the whole, including those already issued, the said sum of four millions of dollars, shall be issued under said mortgage or deed of trust bearing date December 31, 1856, so as to make the amounts thereof liens upon the said road from Portage City to La Crosse, or any part thereof, or upon any of the turn-outs, bridges, depots, buildings, or other appurtenances thereof, or upon any of the rolling stock, materials, or other personal property acquired or to be acquired for or in connection with the same, or upon any of the lands appurtenant to or acquired or to be acquired under or by virtue of the said acts of Congress and of the State of Wisconsin by reason of the con-
516 struction of said road from Portage City to La Crosse, the said section of road from Portage City to La Crosse being in length one hundred and four miles or thereabouts, and being by way of New Lisbon, Tomah, and Sparta. But nothing herein contained shall be so construed as to prevent the said company from issuing bonds under said mortgage or deed of trust to such additional amount, not exceeding six million of dollars, as shall be requisite for completing their said road from the point known as the Junction, at or near the town of Tomah, to the St Croix river or lake, provided the lien thereof shall be so limited as not to interfere with the prior lien, hereinbefore provided for, of the said first-mentioned bonds for four million of dollars, upon the said section of road from Portage City to La Crosse, with the appurtenances and the lands appurtenant to, or acquired in connection with, that section of road.

And for the considerations and purposes aforesaid the said La Crosse and Milwaukee Railroad Company do further covenant, grant, and agree, to and with the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, as trustees as aforesaid, for and on behalf of all such persons and corporations as now are or shall hereafter become or be holders of any of the bonds within the amount of four millions of dollars, issued and to be issued as herein first recited, and to and with the successors of said trustees, that notwithstanding the provisions contained in the said deed of trust or mortgage, bearing date December 31, 1856, relating to the proceedings to be had in

case of default in payment of the interest upon the bonds issued thereunder, it shall and may be lawful for the said trustees, and they are hereby authorized and empowered, in case default shall be made for the space of sixty days after demand thereof, in the payment of interest upon any of the bonds issued or to be issued within the limit of four millions of dollars, as herein first recited, or in case default shall be made in the payment of the principal of said bonds, or any of them when such principal shall become due, to enter upon and take possession of all and singular the said road from Portage City to La Crosse, constructed and to be constructed as aforesaid, with all the appurtenances thereof, including rolling stock, and to operate such road and apply the net income realized therefrom to the payment of the interest in arrear upon the said bonds issued and to be issued within the limit of four millions of dollars, as herein first recited; and in case the interest which shall have accrued upon any of such bonds, issued and to be issued within such limit of four millions of dollars as aforesaid, shall at any time remain unsatisfied for six months after presentation of the coupons for payment, or in
517 case the principal of such bonds, or any of them, shall have fallen due and shall remain unpaid, the said trustees or their successors may, and upon the written request of the holders of a majority in amount of such bonds, they shall sell, either at public or private sale, all and singular the said road from Portage City to La Crosse, constructed and to be constructed as aforesaid, with all and singular the several tracts, pieces, or parcels of land which now are or may be or constitute the site of the roadway, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of the said section of road from Portage City to La Crosse; and also all and singular the superstructure of that section of road, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said section of road, whether now built and made or to be built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on the said section of road, and all the materials, tools, implements, utensils, and other personal property which have been or may hereafter be procured in connection with said section of road. And also all and singular the rights, liberties, privileges, and franchises of said railroad company of every kind and description relating to the said section of road from Portage City to La Crosse, and execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustees and said railroad company of, in, or to the property so sold, and every part and parcel thereof, including the rights, liberties, privileges, and franchises of said railroad company, in respect of the road from Portage City to La Crosse, which may be sold as aforesaid: Provided

always, that notice of such sale shall be given in accordance with the provision in that behalf contained in the said deed of trust or mortgage, bearing date December 31, 1856; and it is hereby declared and provided that the net proceeds of such sale so made by said trustees shall be applied to the payment of the amount then owing, (whether then due or yet to become due,) for principal and interest upon the said bonds, within the amount of four millions of dollars, issued and to be issued as herein first recited, and in
518 case the said net proceeds shall be insufficient for the full satisfaction thereof, they shall be applied thereto pro rata in proportion to the amounts owing upon said bonds, saving and reserving to the holders of said bonds their rights, liens, and claims for the satisfaction of the balance remaining owing to them, out of the lands and other securities in that behalf provided by the said deed of trust or mortgage bearing date Dec. 31, 1856; provided, always, nevertheless, that if such default in the payment of interest should occur before the completion of the said railroad to La Crosse, the trustees shall not take possession of said road in consequence of such default until such default in the payment of interest shall have continued six months; and the sale of said road in consequence of such default shall not be made until after such default shall have continued twelve months.

And it is hereby expressly declared, granted, and agreed by the said company that the provision herein contained for the security of the said bonds, within the amount of four millions of dollars, issued and to be issued as herein first recited, and for the enforcements of the liens and securities provided therefor, are, in addition to the provisions, liens, and securities made or created in that behalf by the the said original deed of trust or mortgage, bearing date December 31, 1866, and that all such original provisions, liens, and securities are, notwithstanding this instrument, to remain in full force and effect, save in so far as condition of or limitation in respect of the enforcement of such liens or securities are, by this instrument, qualified or dispensed with.

And the said company do hereby, for the considerations aforesaid, further covenant, grant, declare, and agree to and with the said trustees, for and on behalf of all such persons and corporations as now are, or hereafter shall become or be, holders of any of the bonds, within the amount of four millions of dollars, issued and to be issued, as hereinbefore recited, and to and with the successors of said trustees, that all and singular the lots, lands, and real estate whatsoever, which the said company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the city of La Crosse or its vicinity, and all improvements made or to be made thereon, shall be deemed and taken to be appurtenant to the said section of road from Portage City to La Crosse; and for all the purposes of the said original deed of trust or mortgage, bearing date December 31, 1856, and of this instrument the shall be deemed to be included in the conveyance or mortgage thereby made to said trustees, and to be covered by the provision of the said original deed of

trust or mortgage, and of this instrument, whether such lots, lands, or real estate shall have been or shall be provided or acquired
519 for actual use by said railroad company for the purposes of their business or not.

And it is further expressly declared, granted, and agreed by the said company that the entire proceeds of the sales of the lands granted by the State of Wisconsin under the act of Congress of June 3, 1856, to aid in the construction of the roads of the said company, so far as said lands pertain to or are or shall be derived from the construction of that portion of their said road, constructed and to be constructed from Portage City westward to the junction, so called, at or near the town of Tomah, being a distance of sixty-one miles, or thereabouts, from Portage City, embracing about three hundred and seven thousand two hundred acres after deducting therefrom all charge, counsel fees, and expenses incurred by them in and about this trust shall be, by said trustees, disposed of and applied, in the first instance, to the payment of whatever sum or sums may be due or owing upon the four millions of bonds hereinbefore referred to, in accordance with the provisions of the before-mentioned deed of trust or mortgage, bearing date December 31, 1856, and the surplus, if any, after the full satisfaction of said bonds, shall be divided pro rata among the holders of such certificates as may be issued by the said company in connection with the said bonds; allowing to the holders of privileged stock which has been heretofore issued in connection with such bonds, and which shall not be surrendered, such proportion, if any, of the said surplus proceeds as they may be entitled to, which said certificate to be issued in connection with said lands shall be in substance as follows:

This certificate entitles the holder of first mortgage land grant bond No. —— to dividends of such surplus as may be realized by the trustees under the provisions of a certain deed of trust or mortgage of this company to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, dated January 28, 1858, from the sales of the public lands granted by the State of Wisconsin to this company to aid in the construction of its land grant road, so far as said lands pertain to or are or shall be derived from the construction of that portion of their said road, constructed and to be constructed from Portage City westward to the junction, so called, at or near the town of Tomah, being a distance of sixty-one miles, or thereabouts, from Portage City, embracing about three hundred and seven thousand two hundred acres after providing for the first mortgage land grant bonds issued under the above-mentioned mortgage or deed of trust upon the pledge of said lands, in the proportion that one thousand
520 dollars bears to the sum of four millions of dollars of such bonds, issued and to be issued under the provisions of the above named mortgage or deed of trust; or in case the holders of any of the bonds heretofore issued under the said mortgage or deed of trust, with the accompaniment of the privileged stock, so called, shall decline to surrender the certificates for such privileged stock in exchange for certificates of this character, then in proportion to the

amount of certificates of this character, issued and to be issued, to accompany the bonds issued and to be issued, within the above mentioned limit of four millions of dollars, after allowing to the holders of the privileged stock above referred to, which may not be surrendered, such proportion, if any, of the said surplus proceeds of said lands as they may be entitled to.

Such surplus shall be divided by the trustees whenever the amount realized shall be equal to five per cent. upon the amount of the bonds entitled to this privilege. No responsibility attaches to the holder of this certificate for any charges or assessments.

———— ————, *President.*
———— ————, *Register.*

MILWAUKEE, WISCONSIN, *January 28th*, 1858.

In testimony whereof the said The La Grosse and Milwaukee Railroad Company, in pursuance of a resolution of their board of directors to that effect, have to this instrument affixed their corporate seal and caused the same to be attested by their president, and the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp have hereunto set their hands and seals the day and year first above written.

The La Crosse and Milwaukee Railroad Company.
[L. S.] By STEPHEN CLARK, *President.*
JACKSON HADLEY, *Secretary.*

Witnesses: PRENTIS DOW.
D. E. WHEELER.

Witnesses as to the signature of Jackson Hadley:
J. P. C. COTTRILL.
S. R. R. BUTLER.

The said Milwaukee & Minnesota Railroad Company further offered in evidence all the monthly reports of the receiver in the eastern division foreclosure suit, from the time of his appointment to his discharge, as follows:

521 District court of the U. S. for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD Company and others.

To the Hon. A. G. Miller, judge of said court:

I hereby submit my monthly report of the moneys received and disbursed by me as receiver of the La & Milwaukee railroad for the month of July, 1860.

H. CROCKER, *Receiver.*

| | | |
|---|---|---|
| Receipts: | | |
| Balance on hand 30 June, '60 | | $3,118 32 |
| Receipts for freight | | 25,189 76 |
| Receipts for passenger and foreign tickets | | 27,367 15 |
| Receipts, express and miscellaneous matters | | 954 64 |
| Receipts, mails | | 496 53 |
| | | 57,126 40 |
| Disbursements: | | |
| For pay roll | $21,551 30 | |
| For supplies | 11,862 15 | |
| For foreign ticket balances | 8,088 70 | |
| For encumbrances on real estate, west div'n | 1,500 00 | |
| For encumbrances on real estate E. d'v'n. | 2,180 18 | |
| For right of way, W. div | 350 00 | |
| For advance charges | 7,799 56 | |
| For purchase of rolling stock | 10,000 00 | |
| | | 63,331 89 |
| Disbursements over receipts | | 6,205 49 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn on oath, saith that the foregoing statement contains a true and accurate account, according to the best of my knowledge, information, and belief, of the receipts and disbursements of the La Crosse & Milwaukee railroad, as received and paid by him as receiver of said road for the month of July, 1860.

H. CROCKER.

522 Subscribed and sworn to before me, this 14th day of August, 1860.

A. G. MILLER, JR.,
*Not. Pub., Mil. Co., Wis.*

523 District court of the United States for the district Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD and others.

To the Hon. Andrew G. Miller, judge of said court:

I herewith submit my monthly report of the moneys received and disbursed by me as receiver of the La Crosse & Milwaukee r'road for the month of August, 1860.

H. CROCKER, *Receiver.*

Receipts:

| | |
|---|---|
| For freight | $25,024 09 |
| For passenger tickets | 27,466 11 |
| Express and miscellaneous | 1,127 69 |
| Mails | 8,093 54 |
| | 61,711 43 |

Disbursements:

| | |
|---|---|
| Over paid for month of July | $6,025 49 |
| Pay rolls | 19,326 00 |
| Supplies | 8,046 00 |
| Ticket balance | 12,597 44 |
| Advanced charges | 8,550 96 |
| Encumbrances on real estate, E. div'n | 3,000 00 |
| Encumbrances on real estate, W. D. | 508 66 |
| Right of way, E. div'n | 430 00 |
| Right of way, W. div'n | 775 09 |
| Balance on hand | 2,271 79 |
| | 61,711 43 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn on oath, saith that the foregoing is a correct statement, according to the best of his information and belief, of the moneys received and disbursed by him as receiver of the La Crosse & Milwaukee r'road for the month of August, 1860.

H. CROCKER.

Sworn to before me, this 19th day of September, A. D. 1860.

A. G. MILLER, JR.,
*Not. Pub., Mil. Co., Wis.*

524 District court of the U. S., district of Wisconsin.

GREENE C. BRONSON & JAMES T. SOUTTER
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD Co. and others.

To the Hon. A. G. Miller:

I herewith submit the monthly statement of the moneys received and disbursed by me as receiver of the La Crosse & Milwaukee railroad for the month of September, 1860.

Receipts:

| | |
|---|---|
| Balance on hand Aug. 31, '60 | $2,271 79 |
| From freight | 92,483 35 |
| From passenger and foreign tickets | 33,012 48 |
| From express and miscellaneous | 829 04 |
| | 128,596 66 |

Disbursements:

| | |
|---|---|
| For pay rolls | $30,966 81 |
| bills of supplies | 19,339 90 |
| ticket balances | 6,738 75 |
| advance charges | 25,425 93 |
| encumbrances on real estate, east div'n | 2,958 72 |
| encumbrances on real estate, west div'n | 140 00 |
| right of way, east div | 425 00 |
| right of way, west div | 4,583 08 |
| rolling stock, Sept. 29, '60 | 29,842 54 |
| | 128,596 66 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn on oath, saith that the foregoing statement of the receipts and disbursements by him as receiver of the La Crosse and Milwaukee railroad for the month of September, 1860, is true to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 13th day of October, A. D. 1860.

A. G. MILLER, JR.,
*Not. Pub., Mil. Co., Wis.*

525 District court of the U. S. district of Wisconsin.

GREENE C. BRONSON & JAMES T. SOUTTER
*vs.*
LA CROSSE & MILWAUKEE RAILROAD CO. and others.

To the Hon. Andrew G. Miller, judge of said court:

I herewith submit my account of receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of October, 1860.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| Bal. on hand Oct. 1, 1860 | $29,842 54 |
| From freight | 150,005 42 |
| From passenger and freight tickets | 38,065 42 |
| From express and miscellaneous | 645 29 |
| | 218,558 67 |

Disbursements:

| | |
|---|---|
| For pay rolls | $23,000 00 |
| For bills of supplies | 21,729 97 |
| For ticket balances | 12,828 86 |
| For advanced charges | 37,076 73 |

| | |
|---|---|
| For encumbrances on real estate, east div'n | $13,116 29 |
| For encumbrances on real estate, west div'n | 160 00 |
| For right of way, east div'n | 176 50 |
| For right of way, west div'n | 464 25 |
| For rolling stock | 18,387 53 |
| For taxes | 157 00 |
| For interest on 1st mort. bonds | 15,089 40 |
| Balance on hand Oct. 31, 1860 | 76,372 14 |
| | 218,558 67 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, on oath saith that the foregoing is a true statement of the receipts and disbursements by him as receiver of the La Crosse and Milwaukee railroad during the month of October, 1860, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 12th day of November, A. D. 1860.

A. G. MILLER, JR.,
*Not. Pub., Mil. Co., Wis.*

District court of U. S., dist. of Wis.

526 GREENE C. BRONSON & JAMES T. SOUTTER
*vs.*
LA CROSSE AND MILWAUKEE R. Co. and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report of receipts and disbursements as receiver of the La. C. & Mil. R. for November, 1860.

H. CROCKER, *Receiver.*

| | |
|---|---|
| Balance on hand Nov. 1, 1860 | $76,372 14 |
| Received freight | 108,748 16 |
| Passenger and foreign tickets | 36,119 98 |
| Express and miscellaneous | 1,002 00 |
| | 222,242 23 |

Disbursements:

| | |
|---|---|
| Pay rolls | $26,167 25 |
| Bills for material | 25,291 85 |
| Ticket balances | 9,459 16 |
| Advanced charges on freight | 16,981 67 |
| Encumbrances on real estate, east. div | 8,749 53 |
| Encumbrances on real estate, west div | 300 00 |
| Right of way, east div | 14 50 |

| | |
|---|---|
| Right of way, west div | $1,920 00 |
| Rolling stock | 9,381 59 |
| Taxes | 69 54 |
| Miscellaneous | 1,560 99 |
| Coupons on 1st mort. bonds | 17,459 70 |
| Balance on hand | 104,886 50 |
| | 222,242 28 |

STATE OF WISCONSIN, *Milwaukee County*, *ss:*

Hans Crocker, being duly sworn, on oath saith that the foregoing is a true and accurate statement of his receipts and disbursements as as receiver of the La Crosse & Milwaukee railroad, according to the best of his knowledge, information, and belief, for November, 1860.

H. CROCKER.

Subscribed and sworn to before me, this 20 day of December, 1860.

A. G. MILLER, JR.,
*Not. Pub., Mil. Co., Wis.*

527 District court of the U. S., district of Wisconsin.

GREENE C. BRONSON & JAMES T. SOUTTER
*vs.*
THE LA C. & MIL. R. Co. and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report of receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for December, 1860.

H. CROCKER, *Receiver.*

Receipts:

| | |
|---|---|
| From freight | $34,607 83 |
| From passenger and foreign tickets | 25,084 38 |
| From Post Office Department | 6,102 00 |
| From express and miscellaneous | 1,366 18 |
| Balance on hand Dec. 1, 1860 | 104,886 50 |
| | 172,046 89 |

Disbursements:

| | |
|---|---|
| For pay rolls | $22,605 05 |
| For bills of supplies | 13,592 77 |
| For ticket balances | 6,620 21 |
| For advanced charges | 9,903 35 |
| For encumbrances, east div | 1,181 92 |
| For encumbrances, west div | 300 00 |
| For right of way, east div | 235 00 |
| For right of way, west div | 1,145 00 |
| For rolling stock | 14,564 17 |

| | |
|---|---|
| For 1st mortgage bond coupons | $1,830 60 |
| For miscellaneous expenses | 2,623 48 |
| Balance on hand Dec. 31, '60 | 97,445 34 |
| | 172,046 89 |

DISTRICT OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, on oath saith that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of December, 1860, according to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 21st day of Jan'y, A. D. 1860.

A. G. MILLER, JR.,
*Not. Pub., Mil. Co., Wis.*

528 District court of U. S., district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Co. and others.

To the Hon. A. G. Miller, judge of said court:

I hereby submit my report of receipts and disbursements as receiver of the La Crosse and Mil. R. for the month of January, 1861.

H. CROCKER, *Receiver.*

Receipts:

| | |
|---|---|
| From freight | $46,749 29 |
| From passenger and foreign tickets | 16,772 52 |
| From Post Office Depart | 47 68 |
| From express and miscellaneous | 674 19 |
| On hand Jan'y 1, 1861 | 97,445 34 |
| | 161,689 02 |

Disbursements:

| | |
|---|---|
| For pay rolls | $18,464 25 |
| For bills of supplies | 12,301 18 |
| For foreign ticket balances | 11,299 38 |
| For advanced charges | 2,941 67 |
| For encumbrances on real estate, east. div | 2,695 09 |
| For right of way, east. div | 783 10 |
| For right of way, west. div | 195 00 |
| For coupons 1st mort. bonds | 375 60 |

| | |
|---|---|
| For coupons city of Mil. bonds | $3,980 46 |
| Balance on hand Feb. 1, 1861 | 108,653 29 |
| | 161,689 02 |

STATE OF WISCONSIN, *Milwaukee County; ss:*

Hans Crocker being duly sworn, on oath saith that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of January, 1861, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 18th day of February, 1861.

A. G. MILLER, JR.,
*Not. Pub., Mil. Co., Wis.*

529 District court of the U. S., district of Wisconsin.

GREENE C. BRONSON AND JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Comp'y and others

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report of receipts and disbursements as receiver of the La C. and Mil. R. for the month of February, 1861.

H. CROCKER, *Receiver.*

Receipts:

| | |
|---|---|
| From freight | $34,748 36 |
| From passenger and foreign tickets | 14,291 35 |
| From express and miscellaneous | 1,215 92 |
| On hand Feb. 6, '61 | 108,653 29 |
| | 158,908 92 |

Disbursements:

| | |
|---|---|
| For pay rolls | $19,631 20 |
| For bills of supplies | 12,288 68 |
| For foreign tickets | 3,398 36 |
| For advanced charges | 4,875 96 |
| For right of way, east. div'n | 735 00 |
| For right of way, west. div'n | 438 04 |
| For La Crosse depot extension | 645 81 |
| For fencing | 80 00 |
| For State tax | 7,564 76 |
| For legal expenses | 1,094 91 |
| For rolling stock | 3,427 91 |
| Balance on hand M'ch 1, 1861 | 104,728 29 |
| | 158.908 92 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, on oath saith that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of February, 1861, according to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 11th day of March, 1861.

A. G. MILLER, JR.,
*Not. Pub., Mil. Co., Wis.*

530 District court of the U. S., district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report of receipts and disbursements as receiver of the La C. and Mil. R. for the month of March, 1861.

H. CROCKER, *Rec.*

Receipts:

| | |
|---|---|
| Balance on hand M'ch 1, '61 | $104,728 29 |
| From freight | 42,278 64 |
| From passenger and foreign tickets | 18,311 85 |
| From mails | 3,095 41 |
| From express and miscellaneous | 1,332 34 |
| | 169,746 53 |

Disbursements:

| | |
|---|---|
| For pay rolls | $20,674 45 |
| For bills of supplies | 17,649 90 |
| For foreign ticket balances | 5,783 41 |
| Advanced charges | 6,845 49 |
| Right of way, east. div'n | 166 86 |
| Right of way, west. div'n | 438 24 |
| La Crosse elevator | 3,711 83 |
| Fencing | 1,170 54 |
| Discount and commission | 542 03 |
| Coupons 1st mort. bonds | 33,586 40 |
| Coupons city of Mil. bonds | 12,592 00 |
| Bal. on hand, carried to next ac | 66,585 38 |
| | 169,746 53 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, on oath saith that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La C. and Mil. R. for the month of March, 1861, according to the best of his knowledge and belief.

H. CROCKER.

Subscribed and sworn to before me, this 17th day of April, 1861.

A. G. MILLER, JR.,
*Not. Pub., Mil. Co., Wis.*

531 District court of the U. S., district Wisconsin:

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Comp'y and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report of receipts and disbursements for April, 1861.

H. CROCKER, *Rec.*

Receipts:

| | |
|---|---|
| From freights | $65,740 66 |
| From passengers for tickets | 23,495 07 |
| From mails | 827 15 |
| From express and miscellaneous | 1,126 73 |
| On hand Ap'l 1, 1861 | 66,585 38 |
| | 157,774 99 |

Disbursements:

| | |
|---|---|
| For pay rolls | $22,387 96 |
| For bills of supplies | 20,733 54 |
| For foreign ticket balances | 3,446 59 |
| For advanced charges | 26,117 69 |
| For encumbrances on real estate E. div | 9 19 |
| For right of way, east. div | 90 00 |
| For right of way, west. div | 16 50 |
| For La Crosse elevator | 1,818 24 |
| For fencing | 400 00 |
| For Cleveland judgment | 28,801 92 |
| For discount and commission | 75 01 |
| For coupons 1st mort. bonds | 525 60 |
| For coupons, city of Mil'e | 1,782 28 |
| | 106,204 52 |
| Balance on hand to next ac | 51,570 47 |
| | 177,774 99 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, on oath saith that the foregoing is a true and accurate statement of his receipts aud disbursements as receiver of the La Crosse and Milwaukee railroad for the month of April, 1861, according to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 11th day of May, 1861.

A. G. MILLER, JR.,
*Not. Pub., Mil. Co., Wis.*

532 District court of the U. S., district of Wisconsin:

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Co. and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee R. R. for the month of May, 1861.

H. CROCKER, *Receiver.*

Receipts:

| | |
|---|---|
| From freight | $112,711 56 |
| From passenger and foreign tickets | 23,750 44 |
| From mails | 887 87 |
| From express and miscellaneous | 594 83 |
| Balance on hand May 1, 1861 | 51,570 47 |
| | 189,515 17 |

Disbursements:

| | |
|---|---|
| For pay rolls | $24,392 00 |
| For bill of supplies | 26,505 04 |
| For foreign ticket ac | 3,129 12 |
| For advanced charges | 19,231 09 |
| For encumbrances r. est. ea. div'n | 825 30 |
| For right of way, east. div'n | 408 00 |
| For right of way, west. div | 165 00 |
| For La Crosse elevator | 414 23 |
| For fencing | 525 00 |
| On act. interest on land g. mort | 2,00 00 |
| On act. interest on second mort | 2,500 00 |
| For S. Ward, receiver | 2595 12 |
| For interest 1st mort'ge bonds | 4,6 6 20 |
| For interest, city of Mil. bonds | 1,255 97 |
| For dis'c't and commissions | 129 40 |
| Bal. to next account | 102,623 70 |
| | 189,515 17 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, on oath saith that the foregoing, to the best of his knowledge, information, and belief, is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee R. R. for the month of May, 1861.

H. CROCKER.

Subscribed and sworn to before me, this 15th day of June, A. D. 1861.

A. G. MILLER, JR.,
*Not. Pub., Mil. Co., Wis.*

533 District court of the U. S., district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver for the month of June, 1861.

H. CROCKER, *Rec'r.*

Received:

| | |
|---|---|
| From freight | $102,957 17 |
| From passenger and freight tickets | 32,079 65 |
| From express and miscellaneous | 4,455 68 |
| From bal. on hand June 1, 1861 | 102,623 70 |
| | 242,116 20 |

Disbursements:

| | |
|---|---|
| For pay rolls | $30,470 00 |
| For bills of supplies | 38,546 79 |
| For foreign balances | 6,518 48 |
| For ad'n charges | 21,788 10 |
| For right of way, eastern div'n | 1,542 00 |
| For right of way, western div'n | 100 00 |
| For La Crosse elevator | 361 46 |
| For fencing | 1,933 90 |
| For law expenses | 26 94 |
| For cattle killed during Chamberlain's administration | 700 00 |
| For dis't, com., and exchange | 1,000 55 |
| For coupons 1st mort. bonds | 2,465 60 |
| For coupons city of Milw. bonds | 3,065 25 |
| Balance on hand to next account | 133,597 13 |
| | 242,116 20 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, on oath saith that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Mil. railroad for the month of June, 1861, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 12 July, 1861.

A. G. MILLER, JR.,
*Not. Pub., Mil. Co., Wis.*

534 District court of the United States, district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Co. and others.

To the Hon. A. G. Miller, judge of the said court:

I herewith submit my report as receiver for the month of July, 1861.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| Balance on hand July 1, 1861 | $133,597 13 |
| From freight | 88,319 18 |
| From passenger and foreign tickets | 27,220 11 |
| From express and miscellaneous | 3,153 34 |
| | 252,289 76 |

Disbursements:

| | |
|---|---|
| For pay rolls | $32,228 25 |
| For bills of supplies | 26,605 62 |
| For f'gn balances and ad. charges | 37,620 42 |
| For right of way, east. div | 135 00 |
| For fencing | 859 44 |
| For Cleveland judgment | 30,000 00 |
| For land grant m't'g | 20,000 00 |
| For L. Ward, rec'r, ac | 4,953 02 |
| For rolling stock | 4,750 00 |
| For exchange | 832 89 |
| For city of Milwaukee bond, 6 per c | 4,079 07 |
| For first m't'ge bond company | 2,429 81 |
| For real estate bond comp'y | 127 20 |
| For balance to new ac | 87,669 04 |
| | 252,289 76 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, saith that the foregoing is a true and accurate statement of his receipts and disbursements as the receiver of the La Crosse and Milwaukee railroad for the month of July, 1861, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 14 day of August, 1861.

A. G. MILLER, JR,
*Not. Pub., Mil. Co., Wis.*

535 District court of the United States, district of Wisconsin.

GREEN C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE R. R. CO. and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report for August, 1861.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| From freights | $65,835 33 |
| From passenger and foreign tickets | 22,699 44 |
| From mails | 4,739 03 |
| From express and miscellaneous | 1,511 75 |
| Balance on hand Aug. 1, 1861 | 87,669 04 |
| | 182,454 59 |

Disbursements:

| | |
|---|---|
| Pay rolls | $33,127 10 |
| Bills of supplies | 36,426 18 |
| Foreign ticket ac | 6,406 28 |
| Advance charges | 10,311 84 |
| Encumbrances, east. div | 200 00 |
| Right of way, east. div | 404 12 |
| Right of way, west. div | 196 00 |
| Fencing | 2,526 64 |
| Rolling stock | 28,804 85 |
| Taxes, (special) | 226 38 |
| Exch'ge disc't, and commissions | 3,624 82 |
| Coupons, 1st mortgage | 29,431 12 |
| Coupons, city of Milwaukee | 14,988 70 |
| Balance on hand Sept. 1, '61 | 15,780 56 |
| | 182,454 59 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, says that the foregoing statement of receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of August, A. D. 1861, is true and correct to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 16th day of Sept., 1861.

A. G. MILLER, JR.,
*Not. Pub., Mil. Co., Wis.*

536 District court of the United States, district of Wisconsin.

GREENE C. BRONSON and JAS. T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE R.R. Company and others.

To the Hon. A. G. Miller, judge of said court:

Herewith I hand you my report of receipts and disbursements for mo. September, 1861.

HANS CROCKER, *Receiver.*

Receipts:

| | |
|---|---|
| From freight | $94,133 13 |
| From passenger and foreign tickets | 30,113 29 |
| From mails | 4,445 86 |
| From express and miscellaneous | 1,247 15 |
| On hand Sept. 1, 1861 | 15,780 56 |
| | 145,719 99 |

Disbursements:

| | |
|---|---|
| For pay rolls | $35,757 09 |
| For bills of supplies | 31,613 12 |
| For advance charges | 19,049 28 |
| For foreign ticket ac | 7,414 48 |
| For right of way, east. div'n | 735 36 |
| For right of way, west. div'n | 46 50 |
| For fencing | 504 47 |
| For interest first mt'ge bonds | 5,847 60 |
| For interest city of Milwaukee bonds | 6,270 78 |
| For L. Ward, rec'r, ac | 3,637 73 |
| For interest land grant bonds | 6,500 00 |
| For rolling stock | 15,748 40 |
| Balance on hand Oct. 1, '61 | 12,595 18 |
| | 145,719 99 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of September, 1861, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 9th day of October, A.D. 1861.

A. G. MILLER, JR.,
*Not. Pub., Mil. Co., Wis.*

537 District court of the U. S., district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE & MILWAUKEE R. R. Co. and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the receipts and disbursements for October, 1861.

H. CROCKER, *Receiver.*

| Receipts: | |
|---|---|
| On hand Oct. 1st, 1861 | $12,595 18 |
| From freight | 167,855 57 |
| From passenger and f'gn tickets | 38,093 93 |
| From mails | 638 68 |
| From express and miscellaneous | 1,419 11 |
| | 231,412 47 |

| Disbursements: | |
|---|---|
| For pay rolls | $32,981 38 |
| For bills of supplies | 41,003 14 |
| For advance charges | 31,321 25 |
| For foreign ticket ac | 9,539 94 |
| For right of way, east'n div'n | 1,066 68 |
| For right of way, west div'n | 93 00 |
| For fencing | 3,105 70 |
| For rolling stock | 9,170 80 |
| For land grant interest | 1,515 00 |
| For exchange and com. | 27 44 |
| For city of Milwaukee bond coupons | 4,524 78 |
| For 1st m't'ge bond coupons | 6,868 00 |
| For L. Ward, rec'r, acc't | 7,239 48 |
| Balance on hand Nov. 1, '61 | 72,955 88 |
| | 221,412 47 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposes and says that the foregoing is a true copy, accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of October, 1861, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this eighteenth day of October, A. D. 1861.

A. G. MILLER, JR.,
*Not. Pub., Mil. Co., Wis.*

538 District court of the U. S., district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD CO. and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver, showing the receipts and disbursements for the month of November, 1861.

H. CROCKER, *Rec.*

Receipts:

| | |
|---|---|
| Balance on hand Nov. 1, '61 | $72,955 88 |
| From freight | 122,776 43 |
| From passenger and f'gn tickets | 34,128 25 |
| From mails | 8 69 |
| From express and miscellaneous | 2,411 21 |
| | 232,280 46 |

Disbursements.

| | |
|---|---|
| For pay rolls | $39,604 36 |
| For rolls of supplies | 27,253 82 |
| For foreign ticket ac't | 6,707 19 |
| For adv. charges | 18,869 14 |
| For R. of way, east. div. | 419 90 |
| For R. of way, west. div. | 109 64 |
| For fencing | 3,197 02 |
| For land grant m't'ge | 11,985 00 |
| For sinking fund | 12,000 00 |
| For L. Ward, rec'r, ac't | 9,729 22 |
| For Helfenstine m't'ge | 3,451 33 |
| For fire insurance | 2,219 98 |
| For Ch. & North W. R'y ac't | 3,393 88 |
| For exchange, dis., and com. | 122 53 |

| | |
|---|---|
| For coupons 1st m't'ge | $33,290 70 |
| For coupons city of Mil. | 1,838 18 |
| Bal. on hand Dec. 1, '61 | 58,088 57 |
| | 232,280 46 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, says that the foregoing is a true and accurate account of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of November, A. D. 1861, according to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 9th day of December, A. D. 1861.

A. G. MILLER, JR.,
*Not. Pub., Mil. Co., Wis.*

539 District court of the U. States, district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE & MILW. R. R. CO.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver, showing my receipts and disbursements for the month of Dec'r, 1861.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| For freight | $70,950 12 |
| For passenger and f'gn tickets | 31,947 95 |
| For express and miscellaneous | 2,256 45 |
| For mails | 4,390 13 |
| For telegraph | 40 |
| For balance on hand Dec. 1, 1861 | 58,088 57 |
| | 167,633 62 |

Disbursements:

| | |
|---|---|
| For pay rolls | $34,612 20 |
| For bills supplies | 47,752 85 |
| For foreign ticket ac't | 8,635 51 |
| For adv. charges | 6,673 95 |
| For encumbrances, east. div'n | 71 70 |
| For right of way, do do | 20 00 |
| For do west do | 95 37 |
| For fencing | 78 00 |
| For L. Ward, rec'r, ac't | 4,696 00 |
| For Chicago & N. W. R'y ac't | 2,288 86 |

| | |
|---|---|
| For legal expenses | $299 40 |
| For exchange, dis., and commissions | 201 05 |
| For 1st mortgage bond coupons | 1,696 80 |
| For city of Milwaukee do | 866 07 |
| For bal. on hand Jan. 1, '62 | 59,645 86 |
| | 167,633 62 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of December, 1861, according to his knowledge, information, and belief.

Subscribed and sworn to before me, this twenty-first day of January, A. D. 1862.

J. A. PINE,
*Notary Public, Milw. Co.*

Of the above receipts, 17,525 62 were received after the 31st day of December, but were earned in December.

H. CROCKER.

540 District court of the U. S., district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
LA CROSSE AND MILWAUKEE R. R.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing receipts and disbursements for month of January, 1862.

H. CROCKER, *Receiver*.

Receipts:

| | |
|---|---|
| Freight | $39,067 60 |
| Passenger and foreign tickets | 8,553 15 |
| Express and miscellaneous | 1,031 29 |
| Mails | 1,428 02 |
| Balance on hand January 1, 1862 | 59,645 86 |
| | 109,725 92 |

Disbursements:

| | |
|---|---|
| Pay rolls | $26,258 30 |
| Bills supplies | 27,404 87 |
| Foreign ticket ac | 5,826 74 |
| Advance charges | 2,486 45 |
| Right of way, eastern division | 4,239 06 |

| | |
|---|---|
| Right of way, western division | $648 75 |
| Fencing | 1,520 64 |
| Exchange and discount | 37 25 |
| First mortgage bond coupons | 585 80 |
| City of Milwaukee bond coupons | 406 52 |
| L. Ward, receiver, ac | 3,027 06 |
| W. F. Davidson, pres't L. C. and M. P'k't Co. | 527 53 |
| Chicago and N. Western R. R. Co | 2,847 07 |
| Costs in suits | 2,276 22 |
| Bal. on hand Feb. 1, 1862 | 31,633 66 |
| | 109,725 92 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of January, 1862, according to his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this twenty-fifth day of February, A. D. 1862.

W. L. HINSDALE,
*Notary Public, Milwaukee Co., Wis.*

541 District court of the U. States, district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE R. R. Co.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of February, 1862.

H. CROCKER, *Receiver.*

Receipts:

| | |
|---|---|
| Balance on hand Feb'y 1, '62 | $31,633 66 |
| From passenger and f'gn tickets | 13,311 86 |
| From freights | 40,741 11 |
| From express and miscellaneous | 3,720 62 |
| From telegraph | 80 |
| | 89,408 05 |

Disbursements:

| | |
|---|---|
| For pay rolls | $25,382 54 |
| For bills of supplies | 29,242 48 |
| For foreign ticket ac | 2,903 21 |

| | |
|---|---|
| For advance charges | $2,233 26 |
| For inc'd E. div., (R. est. coupons) | 121 20 |
| For right of way, W. div | 54 75 |
| For fencing | 104 64 |
| For first m'tg'e bond coupons | 1,086 20 |
| For exchange and discount | 15 58 |
| For Chicago and N. W. R'y ac | 1,739 11 |
| For balance on hand M'ch 1 | 26,525 08 |
| | 89,408 05 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of February, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 22d day of March, A. D. 1862.

W. L. HINSDALE,
*Notary Public, Mil. Co., Wis.*

542 District court of the United States, district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD CO. } *ss.*

Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of March, 1862.

H. CROCKER, *Receiver.*

Receipts:

| | |
|---|---|
| On hand M'ch 1, '62 | $26,525 08 |
| From freight | 37,776 06 |
| From pass. and f'gn tickets | 14,604 35 |
| From expenses and miscellaneous | 1,465 64 |
| From telegraph | 56 |
| | 80,361 69 |

Disbursements:

| | |
|---|---|
| For pay rolls | $26,488 19 |
| For bills supplies | 25,865 65 |
| For f'gn t'k't ac | 3,914 87 |
| For adv. ch'gs | 4,484 52 |
| For right of w., east. div | 35 00 |

| | |
|---|---|
| For Ch. and N. W. R'y ac | $2,584 46 |
| For exch'g. and disc't | 6 03 |
| For first m'tg'e bond coupons | 120 60 |
| For Milw. city bond coupons | 8,973 13 |
| On hand April 1, '62 | 7,889 24 |
| | 80,361 69 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of March, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 16th day of April, A. D. 1862.

W. L. HINSDALE,
*Notary Public, Milw. County.*

543 District court of the U. States, district of Wisconsin.

GREENE C. BRONSON & JAMES T. SOUTTER
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD CO. } *ss.*

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse & Milwaukee railroad, showing my receipts and disbursements for the month of April, 1862.

H. CROCKER, *Receiver.*

Receipts:

| | |
|---|---|
| Balance on hand April 1, '62 | $7,889 24 |
| From freight | 35,363 85 |
| " passenger and f'gn t'ck't ac | 18,138 27 |
| " express and miscellaneous | 3,543 55 |
| " mails | 5,544 29 |
| | 70,479 20 |

Disbursements:

| | |
|---|---|
| For pay rolls | $27,813 12 |
| " bills supplies | 23,078 33 |
| " foreign ticket ac | 1,627 15 |
| " advance charges | 12,394 94 |
| " right of way, E. div | 291 37 |
| " right of way, W. div | 400 85 |
| " fencing | 800 00 |

| | |
|---|---|
| For La Crosse & Minnesota P'k't Co. ac | $2,500 00 |
| " Chicago & N. W. R. R. Co. ac | 6,121 55 |
| " exchange and interest | 302 04 |
| " 1st m'tg'e bond coupons | 40 30 |
| " Milwaukee city bond coupons | 722 71 |
| | 76,092 36 |

Disbursements over receipts, $5,613 16.

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of April, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 19th day of May, A. D. 1862.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

544 District court of the United States, district of Wisconsin.

GREENE C. BRONSON & JAMES T. SOUTTER
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD Company. } *ss.*

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of May, 1862.

H. CROCKER, *Rec.*

Receipts:

| | |
|---|---|
| From freight | $127,973 98 |
| " passenger and f'gn tickets | 20,807 30 |
| " express and miscellaneous | 1,595 91 |
| " mails | 3,096 44 |
| " transportation of troops | 13,942 30 |
| " telegraph | 1 84 |
| | 167,417 77 |

Disbursements:

| | |
|---|---|
| For am't over paid in April | $5,613 16 |
| " pay rolls | 33,836 40 |
| " bills supplies | 41,673 19 |
| " foreign ticket ac | 5,370 39 |
| " advance charges | 23,419 61 |

| | |
|---|---|
| For encumbrances west. div. (Chamberlain) | $7,908 19 |
| " do. east. " | 93 28 |
| " right of way west. " | 250 00 |
| " fencing | 72 82 |
| " Chicago & North West'n R. Co. ac | 3,308 20 |
| " L. Ward, rec'r, ac | 9,785 59 |
| " 1st m'tg'e bond coupons | 100 55 |
| " Milw. city bond coupons | 1,108 68 |
| Balance on hand May 31, '62 | 34,877 71 |
| | 167,417 77 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse & Milwaukee railroad for the month of May, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 19th day of June, A. D. 1862.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

545 District court of the United States, district of Wisconsin.

GREENE C. BRONSON & JAMES T. SOUTTER
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD Company. } *ss.*

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse & Milwaukee railroad, showing my receipts and disbursements for the month of June, 1862.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| On hand June 1, 1862 | $34,877 71 |
| From freight | 113,108 13 |
| " passenger and f'gn ticket ac | 25,719 71 |
| " express and miscellaneous | 1,244 50 |
| " transportation of troops | 27,963 08 |
| | 202,913 13 |

Disbursements:

| | |
|---|---|
| For pay rolls | $40,009 36 |
| " bill supplies | 45,262 42 |
| " foreign ticket ac | 4,224 62 |
| " advance charges | 16,877 96 |

| | |
|---|---|
| For encumbrances west. div. (Chamberlain) | $8,998 45 |
| " right of way east. div | 100 00 |
| " fencing | 870 43 |
| " La C. & Minn. Steam P'k't Co. ac | 3,517 25 |
| " Ch. & N. W. R'y Co. ac | 2,211 78 |
| " foreclosure 2d m'tg'e expenses | 5,000 00 |
| " one-half State taxes for 1861 | 16,062 23 |
| " exchange | 218 68 |
| " Milwaukee city bond coupons | 70 36 |
| Bal'e on hand June 30, '62 | 59,489 49 |
| | 202,913 13 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of June, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 17th day of July, A. D. 1862.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

546 District court of the United States, district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company. } *ss.*

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of July, 1862.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| Balance on hand July 1, 1862 | $59,489 49 |
| From freight | 105,227 33 |
| From passenger and f'gn tickets | 34,091 98 |
| From express and miscellaneous | 1,054 52 |
| From trans'pt of mails | 2,604 23 |
| From telegraph | 11 93 |
| | 202,479 48 |

Disbursements:

| | |
|---|---|
| For pay rolls | $39,154 65 |
| For bills supplies | 35,901 85 |
| For foreign ticket a'c | 5,244 87 |
| For advance charges | 18,844 00 |
| For grading, paving, and sewerage | 1,169 53 |
| For encumbrances, E. div | 120 30 |
| For right of way, W. div | 30 00 |
| For fencing | 1,300 05 |
| For S. Ward, rec'r, a'c | 14,631 82 |
| For Chicago & N. W. R'y a'c | 8,803 32 |
| For coupons, 1st mort. bonds | 33,764 05 |
| For coupons, city of Mil. bonds | 35 10 |
| Balance on hand Aug. 1, '62 | 43,497 94 |
| | 202,479 48 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposes and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crossse and Milwaukee railroad for the month of July, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 22d day of August, A. D. 1862.

W. L. HINDSALE,
*Notary Public, Milw. City, Wis.*

547 District court of the United States for the district of Wisconsin:

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company. } *ss.*

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of Aug., 1862.

H. CROCKER, *Receiver.*

Receipts:

| | |
|---|---|
| Balance on hand, Aug. 1, '62 | $43,497 94 |
| From freight | 60,914 40 |
| From passenger and f'gn ticket ac | 28,342 23 |
| From express and miscellaneous | 973 16 |
| From transportation of mails | 2,433 27 |
| From telegraph | 10 18 |
| | 136,171 18 |

Disbursements:

| | |
|---|---|
| For pay rolls | $37,453 20 |
| For bills of supplies | 40,841 54 |
| For foreign ticket ac | 8,553 63 |
| For adv. charges | 11,771 91 |
| For grading, paving, and sewerage E. div | 2,786 66 |
| For right of way, w. div | 68 00 |
| For Ch. & N. W. R'y ac | 2,168 28 |
| For La C. & Mil. S. p'k't Co | 4,566 22 |
| For L. Ward, rec'r, ac | 6,503 59 |
| For 1st mt'ge bond coupons | 2,085 20 |
| For city of Milw. bond coupons | 315 79 |
| Bal'e on hand Aug. 31, '62 | 19,057 16 |
| | 136,171 18 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse & Milwaukee railroad for the month of August, 1862, according to his best knowledge, information and belief.

H. CROCKER.

Subscribed and sworn to before me, this 22d day of September, A. D. 1862.

W. L. HINDSALE,
*Notary Pub., Mil. Co., Wis.*

548 District court of U. S., district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD Company. } *ss.*

Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of Sept., 1862.

H. CROCKER, *Receiver.*

Receipts:

| | |
|---|---|
| Balance on hand, Sept. 1, 1862 | $19,057 16 |
| From freight | 126,774 66 |
| From passenger and for. tickets | 42,865 35 |
| From express and miscellaneous | 1,113 74 |
| From telegraph | 34 55 |
| | 189,845 46 |

Disbursements:

| | |
|---|---|
| Pay rolls | $30,524 60 |
| Bill supplies | 26,816 13 |
| Foreign tickets | 9,356 09 |
| Advanced charges | 16,556 27 |
| Grading, paving, and s., E. d. | 1,245 23 |
| Right of way, E. d. | 623 00 |
| Right of way, W. d | 428 00 |
| La C. & Minn. Stm. P'k't Co., ac | 4,211 46 |
| Chicago and N. W. R'y | 872 99 |
| L. Ward, rec'r, ac | 3,523 51 |
| S. D. Hastings, treasurer, taxes | 16,062 33 |
| Money ret'd, U. S. dep't tran't troop | 93 96 |
| Legal expenses (costs in suit ) | 56 75 |
| First mortg. bond coupons | 409 01 |
| City Mil. bond coupons | 8,627 80 |
| Bal. on hand, Sept'r 30, 1862 | 70,438 33 |
| | 189,845 46 |

STATE OF WISCONSIN, *Milwaukee Co., ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of September, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 14th day of October, A. D. 1862.

W. L. HINDSALE, *Notary Public, Mil. Co., Wis.*

549 District court of the U. S., district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the Milwaukee and La Crosse railroad, showing my receipts for the month of October, 1862.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| Cash on hand Oct. 1st., 1862 | $70,438 33 |
| From freight | 161,021 94 |
| From passenger and f'gn tickets | 38,426 95 |
| From express and miscellaneous | 942 00 |
| From telegraph | 17 58 |
| | 270,846 80 |

Disbursements:

| | |
|---|---|
| For pay rolls | $33,635 60 |
| For bills supplies | 31,492 25 |
| For foreign tickets | 6,467 37 |
| For advance charges | 25,178 47 |
| For grading, p., and sewerage, E. D | 571 16 |
| For right of way, E. D | 1,200 00 |
| For fencing | 1,612 37 |
| For Chicago and N. W. R. ac | 12,412 95 |
| For La Crosse and M. St'm P'k't Co. ac | 2,889 27 |
| For L. Ward, receiver | 4,957 66 |
| For rolling stock | 22,100 00 |
| For legal expenses sale, W. D | 1,157 39 |
| For legal expenses sale | 10 50 |
| For first mortg. bond coupons | 533 30 |
| For city Milwaukee bond coupons | 2,547 35 |
| Bal'ce on hand Oct. 31, 1862 | 123,881 16 |
| | 270,846 80 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposes and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of October, 1862, according to his best information, knowledge, and belief.

HANS CROCKER.

Subscribed and sworn to before me, this 18th day of November, A. D. 1862.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

550 Circuit court of the U. S., district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE R. R. Co. } *ss.*

To the hon. judge of said court:

I herewith submit my report as receiver, showing my receipts and disbursements for the month of November, 1862.

H. CROCKER, *Receiver.*

| | |
|---|---|
| Balance on hand November 1, 1862 | $123,881 16 |
| Freight | 128,397 21 |
| Passenger and foreign tickets ac | 33,670 27 |
| Express and miscellaneous | 1,978 69 |
| Chicago and N. Western Railway Co. ac | 925 38 |
| Telegraph | 50 09 |
| | 288,902 80 |

Disbursements:

| | |
|---|---|
| Pay rolls | $39,507 44 |
| Bills supplies | 35,578 11 |
| Foreign tickets | 11,583 44 |
| Advance charges | 21,756 03 |
| Grading, paving, and s., E. D | 1,483 88 |
| Right of way, E. D | 309 15 |
| Right of way, W. D | 21 00 |
| Fencing | 400 00 |
| Rolling stock | 516 20 |
| Fire insurance | 2,300 00 |
| L. Ward, rec'r, ac | 3,833 00 |
| First mortg. bond coupons | 31,784 59 |
| City Mil. bond coupons | 157 97 |
| Bal. cash on hand | 139,671 99 |
| | 288,902 80 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of November, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this day of November, A. D. 1862.

551 U. S. circuit court, district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
LA CROSSE AND MILW. RAILROAD. } *ss.*

To the Hon. , judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of December, 1862.

H. CROCKER, *Receiver*.

Receipts:

| | |
|---|---|
| Balance on hand Nov. 30, 1862 | $139,671 99 |
| Freight | 98,031 04 |
| Passenger and foreign tickets | 41,609 67 |
| Express and miscellaneous | 1,835 22 |
| Telegraph | 76 07 |
| U. S. mail service | 5,809 19 |
| | 287,033 18 |

Disbursements:

| | |
|---|---|
| Pay rolls | $33,976 30 |
| Bills supplies | 55,427 28 |
| Foreign tickets | 11,135 51 |
| Advanced charges | 19,596 96 |
| Grading, pav'g, and s., east. div | 396 70 |
| Right of way, west. div | 121 00 |
| Fencing | 351 11 |
| Chicago and N. West railway | 5,664 18 |
| L. Ward, rec'r | 1,165 80 |
| Cleveland judgment | 15,000 00 |
| Cattle killed during Chamberlain's administration | 300 00 |
| City of Milw. bond coupons | 179 47 |
| First m'tg'e bond coupons | 2,493 18 |
| Government tax on 1st m'tg'e bond coupons, paid in Nov., '62 | 974 40 |
| Bal. cash on hand Dec'r 31, '62 | 140,251 29 |
| | 287,033 18 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of December, 1862, according to his best information, knowledge, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 26th day of January, A. D. 1862.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

552 Circuit court of the U. States, district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD company. } *ss.*

To the hon. judges of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of January, 1863.

HANS CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| Balance cash, Dec'r 31, 1862 | $140,251 29 |
| Freight | 43,610 24 |
| Passenger and foreign tickets | 13,845 82 |
| Express and miscellaneous | 1,781 03 |
| Fire insurance | 1,000 00 |

Disbursements:

| | |
|---|---|
| Pay rolls | $25,700 00 |
| Bills supplies | 5,051 82 |
| Foreign tickets | 1,631 05 |
| Advance charges | 5,044 39 |
| Encumbrances E. div | 123 57 |
| L. Ward, rec'r | 1,165 05 |
| Horicon railroad military ac | 60 68 |
| Chicago and N. Western railway | 1,974 23 |
| J. M. Kimball & Co | 59 58 |
| Charles Howard judgment | 1,000 00 |
| First mortgage bond coupons | 876 27 |
| City of Milw. bond coupons | 158 22 |
| Government tax on pass. income, September | 599 48 |
| Government tax on pass. income, October | 906 25 |
| Government tax on pass. income, November | 814 83 |
| License to use patent right, Conway | 800 00 |
| Bal. cash on hand Jan. 31, 1863 | 154,522 96 |
| | 200,488 38 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements and receiver of the La Crosse and Milwaukee railroad, for the month of January, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this nineteenth day of February, A. D. 1863.

W. L. HINSDALE,
*Notary Public.*

553 Circuit court of the U. S. for State of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Co. *et al.*

To the hon. judges of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of February, 1863.

H. CROCKER, *Rec'r.*

| | |
|---|---|
| Balance on hand January 31, 1863 | $154,522 96 |
| For freight | 60,659 39 |
| For passengers and foreign tickets | 17,751 32 |

| | |
|---|---|
| For express and miscellaneous | $1,218 98 |
| For telegraph | 15 15 |
| | 234,167 81 |

Disbursements:

| | |
|---|---|
| For pay rolls | $26,773 20 |
| For bills supplies | 25,698 70 |
| For foreign tickets | 5,465 39 |
| For advance charges | 4,209 01 |
| For right of way, E. div | 55 00 |
| For fencing | 65 90 |
| For fire insurance | 895 00 |
| For State tax, S. D. H., treas'r | 16,425 70 |
| For Chicago & N. W. R'y ac | 1,662 40 |
| For government tax, pass. earnings, Dec | 759 34 |
| For government tax, pass. earnings, Jan'y, '63 | 673 54 |
| For first mortg. coupons, Dec'r tax | 62 40 |
| For first mortg. coupons | 793 35 |
| For city Mil. coupons | 1,089 08 |
| Bal. on hand Feb. 28, 1863 | 149,539 80 |
| | 234,167 81 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of February, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Sworn and subscribed to before me, this 21st day of March, A. D. 1863.

[L. S.] W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

554 Circuit court of the U. S. for the district of Wisconsin.

GREEN C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE R. R. Co. and others.

To the hon. judges of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee R. R., showing my receipts and disbursements for the month of March, 1863.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| Cash on hand Feb. 28, 1863 | $149,539 80 |
| From freight | 43,574 19 |
| From pass. and f'gn tickets | 27,635 39 |
| From express and miscellaneous | 1,109 75 |
| From trans. of troops | 156 46 |
| From telegraph | 10 22 |
| | 222,025 81 |

Disbursements:

| | |
|---|---|
| For pay rolls | $26,135 70 |
| For bills of supplies | 24,668 39 |
| For foreign t'k't ac | 5,150 16 |
| For advance charges | 6,794 97 |
| For right of way, E. div | 100 00 |
| For right of way, W. div | 100 00 |
| For fencing | 30 00 |
| For J. M. Kimball & Co. ac | 96 00 |
| For land grant m't'ge | 25,000 00 |
| For Chicago & N. W. R'y ac | 7,069 04 |
| For L. C. & Minn. Steam P'k't Co | 1,511 03 |
| For fire insurance | 116 32 |
| For 1st mortgage bonds coupons | 350 50 |
| For city of Milw. bonds coupons | 8,691 38 |
| For legal expenses (said city of Mil.) | 600 00 |
| For bal'e on hand M'ch 31 | 115,585 32 |
| | 222,025 81 |

STATE OF WISCONSIN, *Milwaukee County:*

H. Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of March, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this twenty-second day of April, A. D. 1863.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

555 District court of the United States for the State of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company.

To the hon. judges of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee R. R., showing my receipts and disbursements for April, 1863.

H. CROCKER. *Receiver.*

Receip :

| | |
|---|---|
| Cash on hand April 1, '63 | $115,585 32 |
| From freight | 73,682 72 |
| From pass. & f'gn ticket ac | 29,545 28 |
| From U. S. gov't transp't of troops | 5,844 14 |
| From U. S. gov't transp't of mails | 1,234 06 |
| From express and misc'l | 1,061 91 |
| From telegraph | 11 85 |
| | 226,965 28 |

Disbursements:

| | |
|---|---|
| For pay rolls | $29,405 58 |
| bills supplies | 36,059 05 |
| advance charges | 17,034 49 |
| foreign ticket ac | 3,099 08 |
| J. M. Kimballs & Co. ac | 104 00 |
| gov't tax on coupons | 313 58 |
| gov't tax on pass. earnings | 1,200 38 |
| Chg. & N. W. Ry ac | 7,363 22 |
| Mil. & P. du C. Ry ac | 704 40 |
| F. Vose ac. W. div., "order court" | 8,394 14 |
| 1st m'ge bonds coupons | 472 17 |
| city of Milw. coupons | 1,425 82 |
| cash on hand April 30 | 121,389 37 |
| | 226,965 28 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of April, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this nineteenth day of May A. D. 1863.

W. L. HINSDALE, *Notary Public, Milw. Co., Wis.*

556 Circuit court of the United States, State of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company.

To the hon. judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of May, 1863.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| Cash on hand April 30, '63 | $121,389 37 |
| From freight | 135,680 20 |
| From passenger and f'gn tickets | 37,697 66 |
| From U. S. Post Office Dep't | 132 47 |
| From telegraph | 18 29 |
| From express and miscellaneous | 978 29 |
| From Ch'go & N. W. K'y Co. act | 10,925 94 |
| | 306,822 22 |

Disbursements:

| | |
|---|---|
| For pay rolls | $34,634 40 |
| For bills supplies | 28,716 32 |
| For foreign tickets | 4,943 61 |
| For advance charges | 15,433 61 |
| For Chicago & Mill. ac | 3,625 27 |
| For L. Ward, rec'r, ac | 6,700 95 |
| For L. C. & Minn. St. P'k't Co. ac | 514 58 |
| For patent rights | 250 00 |
| For legal expenses W. div | 2,716 69 |
| For 1st m't'ge bond coupons | 28,891 32 |
| For Milw. city bond coupons | 187 44 |
| For cash on hand May 31st | 180,208 03 |
| | 306,822 22 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans, Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of May, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 22d day of June, A. D. 1863.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

557 GREENE C. BRONSON and JAMES T. Soutter
*vs.*
LA CROSSE AND MILWAUKEE RAILROAD CO. and others.

To the honorable judges of the circuit court of the United States for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of June, 1863.

H. CROCKER, *Rec'r.*

| | | |
|---|---|---|
| Balance of cash on hand May 31, '63, as per report | | $180,208 03 |
| Receipts: | | |
| Freight | $87,782 77 | |
| Passenger and foreign tickets | 23,338 98 | |
| U. S. mails | 45 44 | |
| Telegraph | 11 22 | |
| La Crosse and Minn. Steam Packet Co | 8,304 04 | |
| Chicago and N. Western Railway Co | 8,195 94 | |
| Express and miscellaneous | 90 47 | |
| | | 127,768 86 |
| | | 307,976 89 |

Disbursements:

| | | |
|---|---|---|
| Pay rolls | | $41,156 50 |
| Bills supplies | | 21,376 25 |
| Foreign ticket ac | | 4,038 86 |
| Adv. charge and freight refunded | | 47,344 64 |
| Grading and paving in E. div | | 739 27 |
| Fencing | | 220 00 |
| First mortgage bonds coupons | $5,393 92 | |
| Milw. City do. | 306 69 | |
| | | 5,700 61 |
| Gov't taxes on pass. income April | | 885 60 |
| Chicago & N. Western Railway Co | | 154 26 |
| La Crosse and Minn. Steam P'k't Co | | 15,152 96 |
| Lindsey Ward, receiver | | 3,981 75 |
| Milwaukee and St. Paul Railway Co | | 29,157 45 |
| Cash on hand June 30, 1863 | | 138,068 74 |
| | | 307,976 89 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the

month of June, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 24th day of July, A. D. 1863.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

558 District court of the U. States for State of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company, &c. } *ss.*

To the hon. judge of said court:

I herewith submit my report as receiver of the eastern division of the La Crosse and Milw. railroad, showing my receipts and disbursements for the month of July, 1863.

H. CROCKER, *Receiver.*

| | | |
|---|---|---|
| Balance cash on hand June 30, '63 | | $138,068 74 |
| Receipts: | | |
| Freight on May and June ac | $1,379 43 | |
| Passenger and foreign tickets do | 3,356 71 | |
| Miscellaneous | 228 38 | |
| | | 4,964 52 |
| | | 143,033 26 |
| Disbursements: | | |
| Pay rolls on June ac | | $16,163 18 |
| Bills supplies | | 10,707 94 |
| Foreign ticket balances | | 3,404 71 |
| Freight earnings refunded | | 2,838 01 |
| Grading and paving east. div'n | | 117 00 |
| Right of way do | | 442 25 |
| Chas. H. Roberts order of court a. land grant | | 700 00 |
| Legal expenses | | 74 56 |
| 1st mtge. bond coupons | | 1,992 49 |
| City Milw. bond coupons | | 186 73 |
| Gov't taxes on pass. income May | | 1,026 49 |
| Chicago and N'western Railway Co | | 476 88 |
| Cash on hand July 31, 1863 | | 104,903 02 |
| | | 143,033 26 |

STATE OF WISCONSIN, *Milw. county, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver for the month of July, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Sworn and subscribed to before me, this 21st day of August, A. D. 1863.

W. L. HINSDALE,
*Notary Public for Milw. Co., Wis.*

559 District court of the United States for the district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Co. and others.

To the hon. judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of August, 1863.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| Bal. cash on hand July 31, '63 | $104,903 02 |
| Foreign ticket ac | 114 85 |
| U. S. mail service | 12,519 92 |
| Miscellaneous | 1,271 70 |
| | 118,809 49 |

Disbursements:

| | |
|---|---|
| Bills supplies | $2,956 84 |
| Freight earnings refunded | 635 43 |
| Grading and paving east'n div'n | 1,004 86 |
| Right of way, do. | 40 00 |
| 1st mortgage bond coupons | 1,674 64 |
| Milw. city do. | 17 04 |
| Chicago & N. West'n railway | 668 03 |
| Cash on hand Aug. 31, 1863 | 111,812 65 |
| | 118,809 49 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the

month of August, 1863, according to his best knowledge, information, and belief.

H. C.

Subscribed and sworn to before me, this 28th day of September, A. D. 1863.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

560 U. S. D. C. for district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD and others.

To the judges of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of September, 1863.

H. CROCKER, *Rec.*

| | |
|---|---|
| Bal. cash on hand Aug. 31, '63 | $111,812 65 |
| Receipts: | |
| Foreign tickets ac. balance to June 3, '63 | 2,342 72 |
| | 114,155 37 |
| Disbursements: | |
| Bills supplies, (previous to June 1,'63) | $502 13 |
| Freight earnings refunded do. | 28 58 |
| Grading and paving east. div'n | 485 54 |
| Bal. of State tax, 3 p. c. on earnings for 1862 | 16,425 69 |
| First mortgage bond coupons | 305 50 |
| Milw. city bond coupons | 8,928 48 |
| Cash on hand September 30, '63 | 87,434 45 |
| | 114,155 37 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of September, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 28th day of October, A. D. 1863.

W. L. HINSDALE,
*Notary Public for Milw. Co., Wis.*

561 District court of the U. States for the State of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
LA CROSSE AND MILWAUKEE RAILROAD CO. and others. } *ss.*

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milw. railroad, showing my receipts and disbursements for the month of October, 1863.

H. CROCKER, *Rec'r.*

| | | |
|---|---|---|
| Balance on hand Sept. 30, 1863 | | $87,434 45 |
| Receipts: | | |
| Foreign ticket balance | | 837 56 |
| U. S. mails | | 252 56 |
| | | 88,524 57 |
| Disbursements: | | |
| Bills supplies previous to June 12, '63 | | $210 50 |
| Foreign ticket balances | | 1,378 07 |
| Encumbrances, grading, paving, &c. | | 190 66 |
| Freight earnings refunded | | 96 95 |
| 1st m't'g. bond coupons paid in Oct | $51 12 | |
| 1st m't'g. bond coupons, gov't tax 3 p. ct. on am't paid in qua'r end'g Sept. 30, '63 | 84 60 | |
| | | 135 72 |
| Milw. city bond coupons | 596 36 | |
| Milw. city bond coupons gov. tax | 262 50 | |
| | | 858 86 |
| 2d mort'ge bonds coupons | | 441 65 |
| Cash on hand Oct'r 31, '63 | | 84,352 89 |
| | | 88,524 57 |

STATE OF WISCONSIN, *Milw. Co., ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milw. railroad for the month of October, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 25th day of November, A. D. 1863.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

562 District court of the United States for State of Wisconsin.

JAMES T. SOUTTER, survivor, &c., } ss.
*vs.*
LA C. AND M. R. R.

To the hon. judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of November, 1863.

H. CROCKER, *Receiver.*

Receipts:

| | |
|---|---|
| Balance Nov. 1, '63 | $84,352 89 |
| From U. S. Post Office Dep't | 156 35 |
| | 84,509 24 |

Disbursements:

| | |
|---|---|
| For bills supplies | $170 93 |
| For foreign tickets | 8[illegible] 93 |
| For right of way, E. D. | 2[illegible] 53 |
| For right of way, W. D. | 13 12 |
| For freight earnings refunded | 13 65 |
| For first m't'ge bond coupons | 31,777 44 |
| For city of Milwaukee bond coupons | 187 45 |
| Balance Nov. 30, '63 | 52,231 19 |
| | 84,509 24 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of November, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 20th day of December, A. D. 1863.

W. L. HINDSDALE,
*Notary Public, Mil. Co., Wis.*

563 U. S. district court, Wisconsin.

JAMES T. SOUTTER, survivor, } ss.
*vs.*
LA C. AND M. R. R. Co.

To the Hon. Andrew G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of December, 1863.

HANS CROCKER, *Rec'r.*

| | |
|---|---|
| Balance cash on hand Nov. 30, 1863 | $52,231 19 |
| Receipts U. S. government for trans. of troops | 4,330 02 |
| | 56,561 21 |

Disbursements:

| | |
|---|---|
| Bills supplies | $403 11 |
| Freight earnings refunded | 18 51 |
| First m't'g. bonds coupons | 1,090 47 |
| Milw. city bonds coupons | 1,292 65 |
| Balance cash on hand Dec. 31, '63 | 53,756 47 |
| | 56,561 21 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of December, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 18th day of January, A. D. 1864.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

564 District court of the U. States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA C. & M. R. R. Co. and OTHERS. } *ss.*

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of January, 1864.

H. CROCKER, *Receiver.*

| | |
|---|---|
| Bal. cash on hand Dec. 31, 1863 | $53,756 47 |

Receipts:

None.

Disbursements:

| | |
|---|---|
| Bills supplies | $1 74 |
| Encumbrances east. div | 116 98 |
| Gov't tax on coupons, paid in quarter ending Dec'r 31, '63 | 1,064 62 |
| First mortgage bond coupons | 957 87 |

| | |
|---|---|
| Milw. city bond coupons | $206 79 |
| Balance cash | 51,408 47 |
| | 53,756 47 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of January, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 31st day of January, A. D. 1864.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

565 U. S. dist. court, Wis.

BRONSON and SOUTTER,
*vs.*
LA C. & M. R. R. *et al.*

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of February, 1864.

H. CROCKER, *Rec'r.*

| | | |
|---|---|---|
| Balance cash on hand Jan'r 31, 1864 | | $51,408 47 |
| Receipts: | | |
| Freight ac | | 94 28 |
| Passenger ac | | 3 15 |
| Disbursements: | | |
| Foreign ticket balance | $14 06 | |
| 1st mortgage bond coupons | 77 98 | |
| Chicago and N. West'n R'way Co. ac | 2,210 59 | |
| Bal. cash on hand | 49,203 27 | |
| | 51,505 90 | 51,505 90 |

STATE OF WISCONSIN, *Milwaukee Co., ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of February, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 21st day of March, A. D 1864.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

566 U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
LA CROSSE AND MILW. RAILROAD CO. *et als.*

To the hon. the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of March, 1864.

H. CROCKER, *Receiver.*

| | |
|---|---|
| Balance cash on hand February 29, 1864 | $49,203 27 |
| Disbursements: | |
| Sundry bills and accounts for supplies | $206 65 |
| Foreign ticket balances | 14 59 |
| Freight earnings refunded | 201 81 |
| Encumbrances, E. D. city taxes | 1,068 85 |
| Right of way, east. div | 216 25 |
| First mortgage coupons | 58 49 |
| Milw. city coupons | 9,314 74 |
| Bal. cash on hand | 38,121 89 |
| | 49,203 27 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad, for the month of March, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 16th day of April, A. D. 1864.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

567 U. S. circuit court, State of Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
LA CROSSE & MILW. RAILROAD CO. *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit by report as receiver of the La Crosse & Milwaukee railroad, showing my receipts and disbursements for the month of April, 1864.

H. CROCKER, *Rec'r.*

| | | |
|---|---|---|
| Bal. cash on hand March 31, 1864 | | $38,121 89 |
| Receipts: | | |
| U. S. government military transportation | | 146 24 |
| Milw. & St. Paul Railway Co | | 68,285 50 |
| Disbursements: | | |
| Wesley Kinney, judgment for damages | $2,048 92 | |
| Freight earnings refunded | 289 31 | |
| Right of way, east div'n | 80 00 | |
| Milw. city bond coupons | 187 66 | |
| Bal. cash on hand April 30, 1864 | 103,947 74 | |
| | 106,553 63 | 106,553 63 |

STATE OF WISCONSIN, *Milwaukee Co., ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of April, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 19th day of May, A. D. 1864.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

568 U. S. circuit court, State of Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
LA CROSSE & MILW. RAILROAD CO. *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse & Mil-

waukee railroad, showing my receipts and disbursements for the month of May, 1864.

H. CROCKER, *Rec'r.*

| | | |
|---|---|---|
| Bal. cash on hand April 30, 1864 | | $103,947 74 |
| Receipts: | | |
| Freight earnings refunded | | 31 64 |
| Foreign ticket balances | | 10 03 |
| Exchange ac., bal | | 422 65 |
| Disbursements: | | |
| Vouchers for cattle killed, &c | $177 00 | |
| Right of way, east div'n | 400 00 | |
| Legal expenses | 15 00 | |
| 1st m't'ge bond coupons | 33,105 88 | |
| Milw. city bond coupons | 597 00 | |
| | 34,294 98 | |
| Bal. cash on had May 31, '64 | 70,117 08 | |
| | 104,412 06 | 104,412 06 |

STATE OF WISCONSIN, *Milw. Co., ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of May, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 20th day of June, A. D. 1864.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

569 U. S. circuit court, State of Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
LA CROSSE & MILWAUKEE R'ROAD *et al.*

To the judges of the circuit of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse & Milwaukee railroad, showing my receipts and disbursements for the month of June, 1864.

H. CROCKER, *Rec'r.*

| | |
|---|---|
| Bal. cash on hand May 31, 1864 | $70,117 08 |

Receipts:

None.

Disbursements:

| | |
|---|---|
| Right of way, east div'n | $905 00 |
| Encumbrances, east div'n | 28 36 |
| 1st m'tg'e bond coupons | 155 98 |
| Cash on hand | 69,027 74 |
| | 70,117 08 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of June, A. D. 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 20th day of July, A. D. 1864.

W. L. HINSDALE,
*Notary Public, Mil. Co., Wis.*

570 U. S. circuit court, State of Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
LA CROSSE AND MILW. R. ROAD CO. *et. als.* } *ss:*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of August, 1864.

H. CROCKER, *Rec'r.*

(This should be July.)

Receipts:

| | |
|---|---|
| Bal. cash on hand July 31, 1864 | $68,776 70 |
| Sundry accs | 55 00 |
| | 68,831 70 |

Disbursements:

| | |
|---|---|
| Loss and damage | $25 00 |
| Encumbrances east. div'd | 3,116 00 |
| 1st mortgage coupons | 116 98 |
| Milw. city coupons | 17 06 |
| Bal. cash Aug. 31, '64 | 65,556 66 |
| | 68,831 70 |

STATE OF WISCONSIN, *Milw. County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milw. railroad for the month of August, A. D. 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 20th day of August, 1864.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

571 U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE AND MILW. R'ROAD *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of August, 1864.

H. CROCKER, *Rec.*

Receipts:

| | |
|---|---|
| Bal. cash July 31, 1864 | $68,776 70 |
| Sundry accs | 55 00 |
| | 68,831 70 |

Disbursements:

| | |
|---|---|
| Loss and damage ac | $25 00 |
| Encumbrances east. div | 3,116 00 |
| 1st mortgage coupons | 116 98 |
| Milw. city coupons | 17 06 |
| Bal. cash Aug. 31, '64 | 65,556 66 |
| | 68,831 70 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of August, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 21st day of September, A. D. 1864.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

572 U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE AND MILW. R.R. Co. *et al.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of September, 1864.

H. CROCKER, *Rec.*

| | |
|---|---|
| Bal. cash on hand Aug. 31, 1864 | $65,556 66 |
| Receipts: | |
| None. | |
| Disbursements: | |
| J. T. Soutter, surviving trustee | $1,128 15 |
| H. L. Palmer | 1,000 00 |
| 1st mortgage coupons (govt. tax) | 1,047 60 |
| Milw. city coupons (govt. tax) | 313 95 |
| 1st mortgage coupons paid in Sept'r | 77 98 |
| Milw. city coupons paid in Sept'r | 8,708 88 |
| Cash on hand Sept. 30, 1864 | 53,280 10 |
| | 65,556 66 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of September, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 20th day of October, A. D. 1864.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

573 U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE & MILW. RAILROAD CO. *et als.* } *ss.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of October, 1864.

H. CROCKER, *Rec'r.*

| | |
|---|---|
| Bal. cash on hand, as per report, Sept. 30, '64 | $53,280 10 |

Disbursements:

| | |
|---|---|
| Sundry ac., 1862 and 1863, for operating | $273 06 |
| Damages, (S. & Cotzhausen,) | 100 00 |
| Legal expenses, 100, 489 25, 1,000 | 1,589 25 |
| Freight earnings refunded | 1 42 |
| Right of way, east. div | 19 00 |
| 1st mortgage coupons | 5,849 10 |
| Milw. city coupons | 919 32 |
| Bal. cash Oct'r 31, 1864 | 44,528 95 |
| | 53,280 10 |

STATE OF WISCONSIN, *Milw. Co., ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of October, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subrcribed and sworn to before me, this 20th day of November, A. D. 1864.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

574 United States circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE & MILW. RAILROAD CO. *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of November, 1864.

H. CROCKER, *Rec'r.*

| | |
|---|---|
| Bal. cash, as per report, Oct'r 31, '64 | $44,528 95 |

Receipts:

| | |
|---|---|
| Milwaukee and St. Paul Railway Co | 24,000 00 |
| | 68,528 95 |

Disbursements:

| | |
|---|---|
| First mortgage bonds coupons | $33,990 75 |
| Milw. city bonds coupons | 303 21 |
| Bal. cash Nov'r 30, '64 | 34,234 99 |
| | 68,528 95 |

STATE OF WISCONSIN, *Milwaukee Co., ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milw. railroad for the month of November, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 20th day of Nov., A. D. 1864.

W. L. HINSDALE.
*Notary Public, Milw. Co., Wis.*

575 U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE & MILW. RAILROAD CO., *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of December, 1864.

H. CROCKER, *Rec'r.*

| | | |
|---|---|---|
| Bal. cash on hand Nov'r 30, 1864, as per report | | $34,234 99 |
| Receipts: | | |
| Milw. & St. Paul Railway Co | | 5,000 00 |
| Disbursements: | | |
| Personal damages | $400 00 | |
| Operating expenses, (old ac's) | 61 00 | |
| Damages to property, (N. Wood, &c.) | 1,614 08 | |
| First mortgage bond coupons | 611 05 | |
| Milw. city bond coupons | 50 13 | |
| Bal. cash on hand Dec'r 31, '64 | 36,498 73 | |
| | 39,234 99 | 39,234 99 |

STATE OF WISCONSIN, *Milw. Co., ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of December, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this day of January, A. D. 1865.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

576 U. S. circuit, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE AND MILWAUKEE R'ROAD CO. *et al.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of January, 1865.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| Balance on hand, as per report, Dec'r 31, 1864..... | $36,498 73 |
| From Milwaukee and St. Paul R. Co..... | 3,000 00 |
| | 39,498 73 |

Disbursements:

| | |
|---|---|
| 1st mortgage bonds, coupons..... | $381 90 |
| Milw. city bonds, coupons ..... | 268 76 |
| Balance on hand Jan'y 31, 1865..... | 38,848 07 |
| | 39,498 73 |

STATE OF WISCONSIN, *Milwaukee Co., ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of January, 1865, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 20th day of February, A. D. 1865.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

577 U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE AND MILW. RAILROAD CO. *et al.*

To the judges of the circuit court of the United States for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of February, 1865.

H. CROCKER, *Rec'r.*

| | |
|---|---|
| Balance on hand January 31, 1865 | $38,848 07 |
| Receipts: None. | |
| | 38,848 07 |

Disbursements:

| | |
|---|---|
| 1st mortgage bond coupons | $422 51 |
| Milw. city bond coupons | 185 21 |
| Bal. on hand Feb. 28th, 1865 | 38,240 35 |
| | 38,848 07 |

STATE OF WISCONSIN, *Milw. Co., ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of February, 1865, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 20th day of March, A. D. 1865.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

578 U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE AND MILW. RAILROAD CO. *et al.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of March, 1865.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| Balance on hand, as reported, Feb. 28, 1865 | $38,240 35 |
| From Milw. and St. Paul Railway Co | 8,500 00 |
| | 46,740 35 |

Disbursements:

| | |
|---|---|
| 1st mortgage bond coupons | $152 67 |
| Milw. city bond coupons | 8,752 46 |
| Bal. on hand March 31, 1865 | 37,835 22 |
| | 46,740 35 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of March, 1865, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 20th day of April, A. D. 1865.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wisconsin.*

579 U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD CO. *et al.* } *ss.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of April, 1865.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| Balance on hand March 31, 1865 | $37,835 22 |
| Milw. & St Paul Railway Co. | 1,500 00 |
| | 39,335 22 |

Disbursements:

| | |
|---|---|
| First mortgage coupons | $38 10 |
| Milw. city do | 366 67 |
| Bal. on hand April 30, 1865 | 38,930 45 |
| | 39,335 22 |

STATE OF WISCONSIN, *Milw. County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of the receipts and disbursements as receiver of the La Crosse & Milwaukee railroad for the month of April, 1865, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 20th day of May, A. D. 1865.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

580 U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE & MILW. RAILROAD CO. *et al.*

To the honorable judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse & Milw. railroad, showing my receipts and disbursements for the month of May, 1865.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| Balance on hand April 30, 1865 | $38,930 45 |
| Milw. & St. Paul Railway Co | 445 00 |
| | 39,375 45 |

Disbursements:

| | |
|---|---|
| Milw. & Minnesota R. R. Co., A. Fleming, V. Pres't. | $445 00 |
| Balance May 31, 1865 | 38,930 45 |
| | 39,370 45 |

STATE OF WISCONSIN, *Milw. Co., ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of May, 1865, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to this 20th day of June, A. D. 1865.
W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

581 U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE & MILW. RAILROAD *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse & Milw. railroad, showing my receipts and disbursements for the month of June, 1865.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| Balance on hand May 31, 1865 | $38,930 45 |
| Milwaukee & St. Paul Railway Co | 38,256 69 |
| | 77,187 14 |

Disbursements:

| | |
|---|---|
| Foreign ticket ac't | $24 03 |
| Freight earnings refunded | 24 25 |
| Legal expenses | 159 20 |
| Balance on hand June 30, 1865 | 76,976 66 |
| | 77,187 14 |

STATE OF WISCONSIN, *Milw. Co., ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse & Milwaukee railroad for the month of June, 1865, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 20th day of June, A. D. 1865.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

582 U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE & MILW. RAILROAD CO. *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse & Milwaukee railroad, showing my receipts and disbursements for the month of July, 1865.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| Balance on hand June 30, 1865 | $76,979 66 |
| Milw. & St. Paul Railway Co | 5,000 00 |
| | 81,979 66 |

Disbursements:

| | |
|---|---|
| Legal expenses, H. L. Palmer | $2,000 00 |
| 1st mortgage coupons | 34,478 32 |
| Milw. city do | 634 03 |
| Balance on hand July 31, 1865 | 44,867 31 |
| | 81,979 66 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of July, 1865, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 20th day of August, A. D. 1865.

W. L. HINSDALE,
*Notary Public, Milw. County, Wis.*

583 U. S. circuit court, Wisconsin.

J. T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE & MILW. RAILROAD CO. *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse & Milwaukee railroad, showing my receipts and disbursements for the month of August, 1865.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| Balance on hand July 31, 1865 | $44,867 31 |
| Milw. & St. Paul R'way Co | 30,000 00 |
| | 74,867 31 |

Disbursements:

| | |
|---|---|
| S. D. Hastings, State tr., State tax, 1864 | $21,330 36 |
| Encumbrances on real estate | 63 45 |
| Legal expenses, J. S. Brown | 2,500 00 |
| First mortgage coupons | 1,997 30 |
| Milw. city coupons | 1,045 70 |
| Balance Aug. 31, 1865 | 47,930 50 |
| | 74,867 31 |

STATE OF WISCONSIN, *Milw. Co., ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse & Milwaukee railroad for the month of August, 1865, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 27th day of September, A. D. 1868.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

584 U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE & MILWAUKEE R. R. Co. *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of September, 1865.

| | |
|---|---|
| Balance as reported August 31, 1865 | $47,930 50 |
| Received from Milw. & St. Paul R'way Co | 55,331 65 |
| | 103,262 15 |

Disbursed:

| | |
|---|---|
| For operating expenses | $6 00 |
| Legal expenses | 19,558 21 |
| Encumbrances real estate | 175 76 |
| First mortgage coupons | 704 76 |
| Milw. city coupons | 8,184 66 |
| Balance Septr. 30, 1865 | 74,632 76 |
| | 103,262 15 |

In addition to the above sum reported as received from the Milw. & St. Paul R'way Co., I further report that said company, by virtue of the order of July 18, 1865, paid to me 1,561 coupons of $40 each, amounting to $62,440 00 of the second mortgage bonds, which coupons I now hold.

H. CROCKER, *Rec'r.*

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of September, 1865, according to his best knowledge, information and belief.

H. CROCKER.

Subscribed and sworn to before me, this 2d day of October, A. D. 1865.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

585 U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD.

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse & Milwaukee railroad, showing my receipts and disbursements for the month of October, 1865.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| Balance as reported Sept. 30, 1865 | $74,632 76 |
| Milw. & St. Paul R'way Co | 50,461 34 |
| | 125,094 10 |

Disbursements:

| | |
|---|---|
| Right of way east div | $611 00 |
| First mortgage coupons | 192 07 |
| Milw. city coupons | 799 95 |
| Balance October 31st, 1865 | 123,491 08 |
| | 125,094 10 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse & Milwaukee railroad for the month of October, 1865, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 20th day of November, A. D. 1865.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

536 U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE & MILW. RAILROAD *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse & Milwaukee railroad, showing my receipts and disbursements for the months of November, 1865.

H. CROCKER, *Rec'r.*

| | |
|---|---|
| Balance on hand, Oct. 31, 1865. | $123,491 08 |
| Receipts: | |
| None. | |
| Disbursements: | |
| Legal expenses | $1,095 45 |
| Encumbrances E. div | 127 86 |
| 1st mort'ge coupons | 35,084 37 |
| Milw. city coupons | 1,095 84 |
| | 37,403 52 |
| Bal. on hand Nov. 30, '65. | 86,087 56 |
| | 123,491 08 |

In the above bal. of $86,087 56 is included 2d mort'ge coupons past due, amount'g to $62,440.

H. CROCKER, *Rec'r.*

STATE OF WISCONSIN, *Milw. Co., Wis., ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of November, 1865, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 20th day of Dec'r, A. D. 1865.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

587 U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE & MILW. RAILROAD CO. *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of December, 1865.

H. CROCKER, *Rec.*

| | |
|---|---|
| Receipts: | |
| Balance on hand November 30th, 1865 | $86,087 56 |
| Pay roll ac. bal. on settlement | 387 07 |
| | 86,474 63 |

Disbursements:

| | |
|---|---|
| Loss and damage | $98 76 |
| Operating expenses | 51 00 |
| Legal expenses | 845 53 |
| First mortgage coupons | 3,936 20 |
| Milw. city do | 75 25 |
| Balance on hand Dec. 31, '65 | 82,467 89 |
| | 86,474 63 |

STATE OF WISCONSIN, *Milw. Co., ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of December, 1865, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 20th day of January, A. D. 1866.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

588 U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE & MILW. R. R. CO.

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of January, 1866.

H. CROCKER, *Rec'r.*

Receipts:

| | |
|---|---|
| Balance on hand December 31, 1865 | $82,467 89 |
| Milw. and St. Paul Railway Co, 2d mtge. coupons | 62,440 00 |
| | 144,907 89 |

Disbursements:

| | |
|---|---|
| Operating ac | $229 00 |
| Expenses foreclosure 2d mtge | 17,796 36 |
| Legal expenses | 91 75 |
| 1st mortgage coupons | 666 66 |
| Milw. city do | 33 33 |
| 2d mtge. coupons | 62,400 00 |
| Bal. on hand Jan'y 31, 1866 | 63,690 79 |
| | 144,907 89 |

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milw. railroad for the month of January, 1866, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 26th day of February, A. D. 1866.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

589 U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
THE LA CROSSE & MILWAUKEE R. R. Co.

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of February, 1866.

H. CROCKER, *Rec'r.*

Receipts:

None.

| | |
|---|---|
| Balance on hand January 31, 1866 | $63,690 79 |

Disbursements:

| | |
|---|---|
| Operating expenses | $32 25 |
| Encumbrance E. div'n | 221 14 |
| First mtge. coupons | 153 59 |
| Milw. city do | 391 30 |
| Balance Feb. 28, 1866 | 62,892 51 |
| | 63,690 79 |

STATE OF WISCONSIN, *Milw. County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as the receiver of the La Crosse and Milw. railroad for the month of February, 1866, according to his best knowledge, information, and belief

H. CROCKER.

Subscribed and sworn to before me, this 30th day of March, A. D. 1866.

W. L. HINSDALE,
*Notary Public, Milw. Co., Wis.*

The said Milwaukee and Minnesota Railroad Company further read in evidence the report of sale in the land grant case, with the exceptions thereto, and the orders of the circuit court thereon, as follows:

590 *Exhibit No. —.—Marshal's report of sale of the western division.*

In the district court of the United States for the district of Wisconsin, in chancery.

GREENE C. BRONSON, JAMES T. SOUTTER, and Sheperd Knapp, trustees, complainant,

*vs.*

LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Broadhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, the Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy, Horace Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. J. Barton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce and Young, John M. Trift, Jonathan P. Hopper, D. S. Kingore, Noah Sturdevant, William Fessenden, John L. Southland, E. Haskett Derby, Frederick Levick, Charles Shephard, C.

591 P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, John J. Vanderbilt, T. F. Bergen, G. S. Boardman, and John Nicholson, defendants.

I, Darius C. Jackson, marshal for the district of Wisconsin, hereby

report that in pursuance and by virtue of a decree made by the district court of the United States for the district of Wisconsin, on the thirteenth day of January, A. D. 1862, as directed in said decree, I gave notice of the time and place of sale by publication once in each week for three months, in the La Crosse Republican, a newspaper published in the city of La Crosse, and in the Evening Post, a newspaper published in the city of New York, (a printed copy of said notices and the affidavits of publication are hereto annexed and referred to as a part of this report,) and I did at the time and place mentioned in said printed notice, to wit, on the 25th day of April, in the year 1863, at two o'clock, at the post office in the city of Milwaukee, then and there first offer for sale and sell at public auction the premises described in said decree as follows, to wit:

All and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company under and by virtue of an act of Congress of the United States, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3, A. D. 1856, and under or by virtue of an act of the legislature of the State of Wisconsin, approved Oct. 11, A. D. 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,'" approved June 3, A. D. 1857, so far as the said lands pertain or are applicable to the construction of said road from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of lands, together with all the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, situate, lying and being in the State of Wisconsin, which were bid off by William Wallace Pratt and William H. White, for the sum of one hundred and twenty-five thousand dollars, ($125,000,) they being the highest and best bidder, and that being the highest and best bid made for the premises described.

592 And I there offered for sale and sold in like manner the balance of the premises and property described in said decree, as follows, to wit: All and singular the several tracts, pieces, or parcels of land which constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which constitute part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between townships 25 and 31, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have been procured for used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property which have been procured for or used in connection with said roads, or either of them, and also all and singular the

rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description relating to said roads, (of said rolling stock forty box cars, numbered respectively 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408; and such proportion or share of rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenues of the portion of road covered by the aforesaid mortgage bear to the balance or other end of said road, was sold free and clear of all lien encumbrance; but the remainder of the above-mentioned rolling stock was sold subject to the lien of mortgages prior in date to the mortgage above mentioned, given by said La Crosse and Milwaukee Railroad Company,) together with the tools, rents, and income to be had or levied therefrom, and all corporate and other rights, franchises, and privileges of the said company, of, in, and to, or concerning the same, being all the property, real or personal, described in the said mortgage, (except the lands therein mentioned, granted by Congress to the State of Wisconsin;) and all and singular the privileges, hereditaments, appurtenances to the same belonging, or in any wise appertaining, situate, lying, and being in the State of Wisconsin,
593 which was bid off by William Wallace Pratt and William H. White, for the sum of two million six hundred and seventy-five thousand dollars, ($2,675,000,) they being the highest and best bidders, and that being the highest and best bid made for the premises last above described.

And I further report that said purchasers have complied with both of their said bids and have paid to me the sum of two million eight hundred thousand dollars, as follows:

Said sum is $1,001,932, on each dollar of the principal of the bonds secured by the said mortgage, as fixed by the decree in this cause, said purchasers have paid twenty-seven hundred and eight thousand six hundred and twenty-three 8-100 dollars, ($2,708,623 08,) in bonds secured by said mortgages, as follows: nineteen hundred and thirty-nine (1,939) of said bonds numbered between 1 and 1,991 inclusive, for one thousand dollars each. Eighteen hundred and sixty-five, (1,865,) of said bonds for one thousand dollars each, numbered between 1,992 and 3,950, inclusive, and ninety-two bonds for five hundred dollars each, numbered between 1 and 100, inclusive, and ninety-one thousand three hundred and seventy-six dollars and twenty-two cents, ($91,396 22,) in cash, all of which amounts to $1,001,932 on the dollar of the principal of all the bonds outstanding and secured said mortgage.

DARIUS C. JACKSON,
*U. S. Marshal.*
By W. J. JACKSON, *Deputy.*

594 Circuit court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp, trustees,
*vs.*
LA CROSSE AND MILWAUKEE RAILROAD Company, J. Albert Helfenstein, trustee, and others.

Exceptions taken by the said J. Albert Helfienstein to the report of D. C. Jackson, esq., marshal of the United States for the said district, of the sale of the mortgaged premises in this cause reported by him to have been made on the 2d day of October, A. D. 1862, under and by virtue of the decree in this cause made on the 13th day of January, A. D. 1862:

First. As to the sale of lands ordered to be sold by the said decree:

1st exception. For that the said marshal shows in and by his said report that he did not offer for sale or sell any known or specific tracts of land, but did offer for sale and sell a vague and undefined claim of title to sell the lands granted or intended to be granted to the said La Crosse & Milwaukee Railroad Company by the acts of Congress and of the State legislature without its appearing whether the said railroad company had acquired any title to any, and what quantity, of such lands.

2d exception. For that the said marshal so sold the said lands for a wholly inadequate price under circumstances to deter bidders from bidding an adequate price therefor.

Second. As to the sale of the railroads, appurtenances, and franchises ordered to be sold by said decree:

3d exceptions. For that the said marshal reports in this behalf, a sale which he did not make; the bid which he reports as the
595 highest and best bid made in this behalf not having been made in fact at such sale, and the report being in this behalf untrue in fact.

4th exception. For that the said marshal reports that he sold the mortgaged premises last mentioned for a wholly inadequate price under circumstances to deter bidders from bidding an adequate price therefor, as appears by the evidence filed in this cause.

5th exception. For that said marshal shows in and by his said report that he so sold the mortgaged premises last mentioned by a vague and uncertain description not indicating the extent of the estate or franchise so sold or the rights of a purchaser thereunder.

6th exception. For that it appears by the evidence in this cause that the said Bronson, Soutter, and Knapp caused the marshal to make such sale in violation of an injunctional order made by the circuit court of Dane county in a certain cause wherein they are defendants, and whereas they have submitted their rights and equities in and under their said mortgage, and that notice of such injunctional order

was given at said sale; and that whether or not the said marshal could of right disregard such injunctional order, such injunctional order was calculated and had a tendency to deter bidders from bidding at said sale, and from bidding an adequate price for the mortgaged premises.

7th exception. For that it appears by the evidence in this cause that the purchasers of the mortgaged premises at the said sale purchased for themselves and others, under a combination to make such purchase so great and extensive as to deter bidders and prevent competition as said sale.

8th exception. For that it appears by the evidence in this cause that the purchasers of the mortgaged premises at the said sale purchased for themselves and others under a combination to connect the railroad so purchased with another railroad, and to sever the same wholly or in part from the eastern division of the La Crosse
596 and Milwaukee railroad, and thereby to sever the franchises of the La Crosse and Milwaukee Railroad Company, and to injure the interests of all persons in the said eastern division against the terms and policy of the charter of the said railroad company.

9th. For that this defendant, as appears by the record in this cause, has appealed from the final decree herein to the Supreme Court of the United States, and that no confirmation of said sale ought to be made pending such appeal.

10th exception. For that on the 28th day of July, A. D. 1862, said marshal had no lawful power, right, or authority to adjourn said sale until October 2d, 1862, or until any other time, and hence had no power or authority to make said sale on said October 2d, 1862.

11th exception. For that said advertisement of sale, and said notices of the adjournment therefor, were informal and insufficient, the proofs of the advertisement of said sale are informal and insufficient, and said report is informal and insufficient, and said sale was irregularly made and made without authority of law, and should therefor be set aside.

Wherefore the said J. Albert Helfenstein excepts to the said marshal's report, and humbly prays that the same and the sale thereby reported may not be confirmed, but may be altogether set aside.

BUTLER, BUTLER & COTTRELL &
PALMER & STARK,
*Sol'rs for J. Albert Helfenstein.*

597 Circuit court of the United States, district of Wisconsin.

FRANCIS VOSE
*vs.*
GREENE C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp, trustees, The La Crosse and Milwaukee Railroad Company and others.

The complainant in this suit having filed his bill of complaint therein on the 27th day of September, A. D. 1862, against all the parties in a certain other cause then and still pending in this court, wherein the defendants, Greene C. Bronson, James T. Soutter, and

Shepherd Knapp are complainants, and the defendant, the La Crosse & Milwaukee Railroad Company, and all the other defendants in this suit are defendants, which said suit of the said Bronson, Soutter, and Knapp is instituted and prosecuted for the foreclosure of a certain mortgage of the said La Crosse & Milwaukee Railroad Company; and the complainant in this suit having in and by his bill prayed that the decree in the said suit of the said Bronson, Soutter, and Knapp might be opened and amended so as to let in the complainant in this suit, and to provide for his equities in the premises, and that in the meantime, and until the said decree should have so provided, the sale of the mortgaged premises ordered to be sold under and by the said decree in the said suit of the said Bronson, Soutter, and Knapp might be postponed; and the complainant in this suit having, upon the filing of his said bill, moved this court that the said sale be so postponed, on which motion this circuit then declined to act, leaving the complainant in this suit to seek his remedy in the premises by objection to the confirmation of such sale when made; now comes the complainant in this suit, and files his exceptions by leave of this court to the marshal's report of sale in the said suit of the said Bronson, Soutter, and Knapp.

E. G. RYAN,
*Sol'r and of Counsel for Complainant.*

598 Circuit court of the United States, District of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company, J. Albert Helfenstien, trustee, and others.

Exceptions taken by the said Francis Vose to the report of D. C. Jackson, esq., marshal of the United States of the said district, of the sale of the mortgaged premises in this cause, reported by him to have been made on the 2d day of October, A. D. 1862, under and by virtue of the decree in this cause made on the 13th day of January, A. D. 1862.

First. As to the sale of lands ordered to be sold by the said decree.

1st exception. For that the said marshal shows in and by his said report that he did not offer for sale or sell any known or specific tracts of land, but did offer for sale and sell a vague and undefined claim of title to all the lands granted or intended to be granted to the said La Crosse and Milwaukee Railroad Company by the acts of Congress and of the State legislature, without its appearing whether the said railroad company had acquired title to any and what quantity of such lands.

2d exception. For that the said marshal so sold the said lands for a wholly inadequate price, under circumstances to deter bidders from bidding an adequate price therefor.

Second. As to the sale of the railroads, appurtenances, and franchises ordered to be sold by the said decree.

3d exception. For that the said marshal reports in this behalf a sale which he did not make, the bid which he reports as the highest and best bid made in this behalf not having been made in fact at such sale, and the report being in this behalf untrue in fact.

4th exception. For that the said marshal reports that he sold the mortgaged premises last mentioned for a wholly inadequate price, under circumstances to deter bidders from bidding an ade-
599 quate price therefor, as appears by the evidence filed in this cause.

5th exception. For that the said marshal shows in and by his said report that he so sold the said mortgaged premises last mentioned by a vague and uncertain description not indicating the extent of the estate or franchise so sold, or the rights of a purchaser thereunder.

6th exception. For that it appears by the evidence in this cause that the said Bronson, Soutter, and Knapp caused the marshal to make such sale in violation of an injunctional order made by the circuit court of Dane county, in a certain cause wherein they are defendants, and wherein they have submitted their rights and equities in and under their said mortgage; and that notice of such injunctional order was given at the said sale; and that whether or not the said marshal could of right disregard such injunctional order, such injunctional order was calculated and had a tendency to deter bidders from bidding at said sale, and from bidding an adequate price for the mortgaged premises.

7th exception. For that it appears by the evidence in this cause that the purchasers of the mortgaged premises at the said sale purchased for themselves and others, under a combination to make such purchase so great and extensive as to deter bidders, and prevent competition at said sale.

8th exception. For that it appears by the evidence in this cause that the purchasers of the mortgaged premises at the said sale purchased for themselves and others under a combination to connect the railroad so purchased with another railroad, and to sever the same wholly or in part from the eastern division of the La Crosse and Milwaukee railroad, and thereby to sever the franchises of the La Crosse and Milwaukee Railroad Company, and to injure the interests of all persons in the said eastern division against the terms and policy of the charter of the said railroad company.

9th exception. For that the said Francis Vose has a large
600 equitable interest under the said mortgage, which he is now prosecuting in this court by his said bill of complaint, and that the said sale having been made almost entirely for bonds, the confirmation thereof would greatly impede and embarass, if not wholly defeat, his equitable interest in the premises.

Wherefore the said Francis Vose excepts to the said marshal's report, and humbly prays that the same and the sale thereby reported may not be confirmed, but may be altogether set aside.

E. G. RYAN,
*Sol'r, and of Counsel for Francis Vose.*

601 In the circuit court of the United States for the district of Wisconsin, in the 8th circuit, in equity.

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp, compl'ts,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others, def'ts.

The Milwaukee and Minnesota Railroad Company, Lawrence G. Graham, and Donald D. Scott, by Matt. H. Carpenter, their solicitor, come into court here, after the filing of the marshal's certificate of sale under the decree in the above-entitled cause, and moves the court here to refuse confirmation of said sale, and to set aside said sale, and open the biddings therein for the following reasons among others, viz:

First. That the said certificate is untrue in fact, in this, to wit, that it returns that the said railroad and other things, except said lands, ordered by said decree to be sold, were sold at and for the sum of 2,100,000, whereas in truth and in fact the same was sold by said marshal at said sale at and for the sum of 1,700,000 dollars, and for no other or different sum; and to support this exception, the defendants above moving said court refer to the annexed affidavit.

2d. Because said property sold was not properly advertised by this court; and because said sale was not completed by district court of the United States for said district.

3d. To refuse confirmation, because the present is not a term of the circuit court, the same not having been called or ordered by the presiding judge of said court as required by law.

4th. Because the said lands, sold at 10 cents per acre, were thereby sacrificed to the great injury of all other creditors than the
602 complainants.

5. Because on account of the injunctional order before said sale, served as stated in the annexed affidavit, and proclaimed at said sale, bidders were deterred from bidding, whereby said property was sacrificed, to the injury of said defendants moving the court here.

6. And because said sale is in many other respects and particulars apparent of record, and by the said marshal's certificate of sale in said cause informal, irregular, and illegal.

MATT. H. CARPENTER,
*Sol., and of Counsel for the Defendants above moving.*

Circuit court of the United States for the district of Wisconsin, in the 8th circuit, in equity.

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp, trustees, complainants,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others, defendants.

DISTRICT OF WISCONSIN, *ss:*

Moses Kneeland, being first duly sworn, on oath says that he is the president of the Milwaukee and Minnesota Railroad Company, one of the defendants in the above-entitled cause; that he attended the sale by the marshal under the decree in this cause, which was held at the post office, in the city of Milwaukee, in said district, on the 2d day of October, A. D. 1862; and further says that he was present from the time the marshal of said district arrived at the place of said sale until he left the same after the sale was concluded; and he further says that the lands by said decree ordered to be sold were at said sale struck off to F. P. James at and for the sum
603 of one hundred thousand dollars, that being the highest and best sum bidden therefor; and that the railroad and other things by said decree ordered to be sold, except said lands, were by said marshal struck off to said James, as the highest bidder therefor, at and for the sum of seventeen hundred thousand dollars. ($1,700,000;) and that said last-named sum were the highest and best sum bidden therefor at said sale, and that the return and certificate of said marshal, now filed in court, wherein he certifies that the same were sold to said James for 2,100,000 dollars, is utterly untrue in fact; and that no such sum was bidden therefor by any person at said sale. This affiant further says, on information and belief, that said certificate of said marshal has been made in fraudulent collusion between said marshal and said James, or other persons in interest with said James.

This affiant further says, that before said sale the circuit court for the county of Dane, in the State of Wisconsin, issued a certain injunctional order, having, by the laws of said State the force and effect of a writ of injunction, in a certain action depending in said last-named court, wherein J. A. Helfenstein is plaintiff, and the La Crosse and Milwaukee Railroad Company, said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, plaintiffs in the above-entitled cause, and others, are defendants, of which said cause and the parties thereto said court had jurisdiction concerning the said railroad and other things so sold to said James for the sum of 1,700,000 dollars, enjoining and restraining the said complainants in the above-entitled cause from proceeding to hold and have said sale, and to sell said property until the further order of said last-named court: and that said injunctional order was before said sale duly served on said complainants in the above-entitled cause, according to the practice of said court, by service thereof on the said attorneys of said complainants in said cause in said last-named court, and that notice

thereof was published at said sale in the hearing of all bidders attending said sale.

That a copy of said injunctional order, and the papers on
604 which the same was founded, are attached to, or filed with, the exceptions taken to said sale on the part of said Helfenstein, and to that this affiant refers.

MORSE KNEELAND.

Subscribed and sworn to before me, this 8th day of October, A. D. 1862.

J. M. MILLER, *Clerk.*

605 Circuit court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILroad and others.

JANUARY 5, 1863.

This day came the parties, by their counsel, and on consideration of the several exceptions to the confirmation of the sale, as made by the marshal in pursuance of the decree in this case, and of the several motions to set aside said sale, and of the arguments of counsel thereon, it is ordered by the court that the report of the sale of the lands of the land grant, as described in the decree, be not confirmed. That the biddings for the same be opened, and that the marshal do offer for sale at public sale, and sell the said lands, as described in the decree, according to the directions, terms, and conditions of the said decree, on Wednesday, the twenty-fifth day of February next, at two o'clock in the afternoon of said day, at the post office in the city of Milwaukee, in this district. That he give notice of the time and place of such sale by advertisement in one paper published in La Crosse, in this State, once in each week for six weeks before the day of sale, and in one paper published in the city of New York, in the State of New York, daily for six weeks of publication of said paper before the day of sale. That the biddings at such sale be commenced at the sum now bid of one hundred thousand dollars, unless the bidders should withdraw their said bid.

And it is further ordered by the court that the several exceptions to the sale of the road and appurtenances, and the several motions to set the said sale aside be, and hereby are, overruled; and that the said sale of the said road and appurtenances, as made and reported by the marshal at the sum of one million seven hundred thousand dollars, be, and hereby is, confirmed, unless the lands of the
606 land grant shall be sold at the sale here ordered of the sam at the sum of eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, with interest from the thirteenth day of January, one thousand eight hundred and sixty-two, the date

of the decree, and paid according to the decree; and with leave to move the court to vacate this order respecting the confirmation of the sale of the road on new matters accruing since the hearing of the exceptions in the month of October last.

JANUARY 17, 1863.

This day came Isaac Seymour, Fred. P. James, and N. A. Cowdrey, by Mess. Carey and Pratt, their counsel, and moved the court "to vacate the order nisi confirming the marshal's report of sale of the road, and also to vacate so much of said order as directs said lands to be resold on the twenty-fifth day of February next, bearing date January 5th, 1863, and also to vacate the sale of said road, and that the money paid into court in said sale be returned to said purchasers." Whereupon it is ordered by the court that the whole of the said order of court, made on the first day of this term, (the fifth day of January, instant,) overruling the exceptions to the sale of the road and appurtenances, and confirming said sale, and ordering the buildings upon the lands of the land grant to be opened, and the said lands to be again offered for sale, and sold on the twenty-fifth day of February next, be, and hereby is, vacated and set aside. And it is further ordered that the sale of said road and appurtenances, and of the lands of the land grant, as reported by the marshal, and the said report be, and hereby are, vacated and set aside. And that the said report of sale, and all the proceedings subsequent thereto, be, and hereby are, vacated and set aside. And that the money paid into court, as the proceeds of said sale, be returned and paid back to the said purchasers, to be receipted for by them or their said solicitors, Messrs. Carey and Pratt. And on the motion of the complainants, by their said counsel, it is ordered by the court that the mortgaged premises be advertised and sold by the marshal according to the decree.

607 Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others. } In equity.

To the honorable the circuit court of the United States for the district of Wisconsin:

In pursuance of an order of reference made in this cause on the eighteenth day of July, A. D. 1865, a certified copy of which order is hereto annexed, I, Henry L. Palmer, named in said order, as auditor do respectfully report:

That I have been attended by Hans Crocker, esq., receiver mentioned in said order, and by James S. Brown, esq., his counsel, by John W. Cary, esq., as counsel for the Milwaukee and St. Paul Railway Company, and by Matt. H. Carpenter, esq., as counsel for the Milwaukee and Minnesota Railroad Company, and that I have taken proofs in regard to the matters referred to me by the said order, in

addition to the proofs on file and the records of this cause, which proofs consist of depositions and exhibits, hereto annexed and herewith returned. The exhibits are marked numerically from number 1 to number 5, both inclusive.

That on the appearance of the parties before me the following proceedings were had before any proofs were taken, viz:

The Milwaukee and Minnesota Railroad Company, by Matt H. Carpenter, its counsel, took and stated the exceptions to the several items of the receiver's account, filed in this cause on the 18th day of August, A. D. 1865, set forth and stated in full in the record of testimony taken before me in this cause herewith returned. To which exception Hans Crocker, receiver, by James S. Brown, esq., his counsel, made his objections, as is also set forth in full in said record of testimony herewith returned, and the offer also therein set forth in full.

I further certify and report that the said Hans Crocker, receiver, from the 28th day of February, A. D. 1865, to and including the 31st day of July, A. D. 1865, received and is chargeable with and accountable
608 for the sum of fifty-three thousand seven hundredand one dollars and sixty-nine cents ..... $53,701 69

That during the same period of time the said Hans Crocker, receiver, disbursed in the proper execution of his trust as such receiver, and is entitled to be creditted with the sum of forty-seven thousand seventy-four dollars and seventy-three cents ..... 47,074 73

Leaving balance in his hands of ..... 6,626 96

The particular items of expenditure constituting the said sum of $47,074 73, are shown by the account of the receiver, filed in this court August 18th, 1865.

I have further ascertained and report that the earnings of the mortgaged premises from February 28th, to and including July 31st, 1865, was one hundred and three thousand one hundred and sixty-four dollars and forty-eight cents ..... $103,164 48

And that the expenses of operating and managing the same for the same period of time, was seventy-one thousand five hundred and forty dollars and ninety-four cents ..... 71,540 94

Leaving net earning ..... 31,623 54

I further certify and report that I have ascertained and found from the testimony that the whole value of the rolling on the roads of the Milwaukee and St. Paul Railway Company, and on the eastern division of the La Crosse and Milwaukee railroad, from February 28th, to and including July 31st, 1865, was one million two hundred

and one thousand two hundred and fifty-eight dollars and sixty-five cents, ($1,201,258 65.)

That of this amount of rolling stock six hundred and ninety-five thousand two hundred and ninety-five dollars and fourteen cents ($695,295 14) belonged to the owners of the eastern division of the said La Crosse and Milwaukee railroad, and five hundred and five thousand nine hundred and sixty-three dollars and fifty-one cents thereof in value belonged to the Milwaukee and St. Paul Railway Company. That the whole cost of mileage or value of the use of rolling stock on the eastern division for the period of time above mentioned was twenty-six thousand two hundred and eighty-two dollars and fourteen cents, ($26,282 14,) as shown by Exhibit No. 4. Of this mileage fifteen thousand two hundred and nine dollars and fourteen
609 cents was made and earned by rolling stock belonging to the owners of the eastern division, and eleven thousand seven hundred and three dollars thereof was made and earned by rolling stock owned by the Milwaukee and St. Paul Railway Company.

That for the same period of time the whole cost of mileage or value of use of rolling stock on the roads of the Milwaukee and St. Paul Railway Company was one hundred and eighty-two thousand fifty dollars and fifteen cents, ($182,050 15,) as shown by Exhibit No. 4. Of this amount of mileage one hundred and five thousand three hundred and fifty dollars and fifteen cents ($105,350 15) was made and earned by rolling stock belonging to the owners of the eastern division, and seventy-six thousand seven hundred dollars ($76,700) thereof was made and earned by rolling stock owned by the Milwaukee and St. Paul Railway Company, and that the Milwaukee and St. Paul Railway Company should be charged with the value of the use of rolling stock belonging to the owners of the eastern division of the La Crosse and Milwaukee railroad for the period aforesaid ..... $105,350 15

Less the amount of the value of the use of rolling stock owned by the Milwaukee and St. Paul Railway Company on said eastern division for the same period of time, viz ..... 11,703 00

Balance chargeable to the St. Paul co ..... 93,647 15

I have further ascertained and report that the total cost of the repairs of all the rolling stock belonging to both roads, from the twenty-eighth day of February to and including the 31st day of July, 1865, was one hundred and twenty-six thousand seven hundred and eighty-two dollars and thirty cents, ($126,782 30,) which, divided upon the basis of $695,295 14 to $505,463 51, as shown by Exhibit No. 5, gives seventy-three thousand three hundred and sixty-seven dollars and

thirty cents as the amount thereof chargeable to the eastern division for repairs of its proportion of the rolling stock.

| | | |
|---|---|---|
| For this last-mentioned sum the Milwaukee and St. Paul Railway Company is entitled to a credit in the account against said company for the use of rolling stock, viz | | $73,367 30 |
| Less the amount charged by the said company against the eastern division for repairs, and which is contained in items Nos. 8, 9, and 10, in the account of earnings and expenditures of the eastern division, filed by the receiver August 18, 1865, viz | | 12,814 66 |
| Balance for which St. Paul co. is entitled to credit | | 60,552 64 |

I further report that it appears from the testimony that the Milwaukee and St. Paul Co. paid over to the receiver between the 28th day of February and the 31st day of July, 1865, the sum of fifty-three thousand seven hundred and one dollars and sixty-nine cents $53,701 69

And have paid over to the receiver since the 31st day of July, 1865, the further sum of thirty thousand dollars 30,000 00

Total amount paid by St. Paul co 83,701 69

That of this amount forty-eight thousand dollars was paid prior to the making of the order in the cause in July last, settling the accounts up to February 28th, 1865, and was allowed to said company in that settlement, leaving a balance of thirty-five thousand seven hundred and one dollars and sixty-nine cents, ($35,701 69;) of which amount four thousand seventy-eight dollars and fifteen cents, (4,078 15,) it is claimed by the Milwaukee and St. Paul company, was paid to apply on the order fixing the amount to be paid by the St. Paul company to the receiver in September, 1865, and leaving a balance of thirty-one thousand six hundred and twenty-three dollars and fifty-four cents applicable to the amount now found due from the said company to the receiver.

I further report that allowing the application of the said sum of four thousand seventy-eight dollars and fifteen cents, as claimed by the Milwaukee and St. Paul company, as a payment on account of the amount required by an order heretofore made by this court to be paid by said company to the receiver, I have ascertained and report that the said Milwaukee and St. Paul Railroad Company should be charged with the gross earnings of the eastern division of the La Crosse and Milwaukee railroad, from the 28th day of February, 1865, to and including the 31st day of July, 1865, amounting to the sum of $103,164 45

| | | | |
|---|---|---|---|
| 611 | Also for the use of rolling stock belonging to the owners of the eastern division on its roads for the same period of time as ascertained and stated above | | 93,647 15 |
| | Total charge | | 196,811 63 |
| | And is entitled to credit for the amount expended in the operation of said eastern division as shown by the account filed in this cause August 18, 1865, amounting to | $71,540 94 | |
| | Also for balance of repairs of rolling stock as above | 60,552 64 | |
| | Also amount paid receiver applicable to this ac | 31,623 54 | |
| | | | 163,717 12 |
| | Balance due receiver from St. Paul co | | 33,094 51 |

A statement of this account is hereto annexed and marked Schedule A. I further certify and report that the balance in the hands of the receiver on the 31st day of July, 1865, as shown and stated above of six thousand six hundred and twenty-six dollars and ninety-six cents, ($6,626 96,) is subject to such allowance as the court may make to the receiver for his services, as such the account referred to me and now audited, containing no charge for such services. I also certify and report that it appears from the testimony that since the 31st day of July, 1865, the sum of thirty thousand dollars ($30,000) has been paid over to the receiver as above stated, which is not included in the account of the receiver, filed August 18, 1865, and referred to me. A statement of the account of the receiver as audited is hereto annexed and marked Schedule B.

H. L. PALMER.

Milwaukee, Aug. 30, 1865.

612 Circuit court of the U. S. for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c., *ag't* LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others. } In equity.

Examination of witnesses taken in pursuance of an order of reference made in the above-entitled cause on the 18th day of July, A. D. 1865.

Present, Tuesday, August 22, 1865, H. L. Palmer, special commissioner, James S. Brown, solicitor for Hans Crocker, receiver; Matt. H. Carpenter, solicitor for the Milwaukee and Minnesota Railroad Company, and Alexander Fleming, Thomas L. Ogden, solicitor for complainant, N. J. Emmons, solicitor for def't, Selah Chamberlain.

Adjourned by consent to Wednesday, August 23d, at 10 o'clock a. m.

AUGUST 23, 1865, at 10 a. m.

Parties present as above.

The Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its counsel, takes and states exceptions to each and every item, matter, and thing in the said "statement of the earning of the eastern division L. & M. R. R. Co., February 28th to July 31, 1865," filed by the receiver in this cause, and will require the receiver to establish and prove the same, and furnish and file with the auditor all vouchers therefor. Said Milwaukee and Minnesota Railroad Company also states and takes objection and exception to each and every item, matter, and thing contained in the said "statement of receipts and disbursements of the receiver for the same period," and will require the said receiver to make proof of the same and furnish and file with the auditor vouchers therefor.

The receiver, by Mr. James S. Brown, his counsel, objects to the above exceptions as being so general and indefinite that it does not point out the item or items to which objection is made, or the ground of such objection.

The receiver now here offers to produce here before the auditor, or at any place to be appointed by the auditor, all his books, papers, and vouchers relat o the account rendered.

Hans Crocker, sworn and examined on behalf of the receiver, by Mr. Brown, testified as follows:

613 Question. Is the account filed by you now before the auditor a just and true account of the receipts and expenditures by you as receiver to the best of your knowledge, information, and belief?

Answer. It is.

Cross-examined by Mr. Carpenter for Milwaukee and Minnesota Railroad Company:

Question. Have you any personal knowledge of the correctness of the statement called "statement of the earnings and expenses of the eastern division L. & M. R. R. Co., Feb. 28 to July 31, 1865?"

Answer. I have no personal knowledge of all of them, but presume the whole account is correct as returned to me by the St. Paul company.

Question. If you have individual and personal knowledge of the correctness of any of the items of that statement, specify which items you have such knowledge of?

Answer. I have no personal knowledge that any items are correct, but they are returned to me by the proper officers having charge the operating of the road, and I believe them to be correct. It is impossible for any one man to certify to the correctness of all the items, as the expenditures are made on different accounts, by different parties, and at different places.

Question. Have you during the period covered by this statement kept or caused to be kept books of account showing daily the receipts and disbursements in operating this eastern division?

Answer. I have kept no books separate from the books kept by the St. Paul company of the earnings and operating expenses. I keep an account of the cash receipts and expenses by me as receiver, which I file monthly, as well as of the earnings and expenses of operating the road as furnished by the St. Paul company.

Question. Where is that book kept by you, and will you produce it for our inspection at this time?

Answer. The account is kept by Mr. Hinsdale, my cashier. I will produce it before you get through the examination.

Question. What kind of a book, and how many books, have been kept by you as receiver during the period covered by this account?

614 Answer. There is only one cash book of receipts and expenditures and vouchers for each expenditure kept by Mr. Hinsdale.

Question. Have you during this period kept any other book or account of your own as receiver in relation to the operation of this eastern division?

Answer. I have not. I receive from month to month a detailed statement of the earnings and operating expenses of the road from the St. Paul company, which I file in court monthly, and it is a copy of the account on file in the St. Paul company office.

Question. During the period aforesaid, as these monthly statements have been rendered to you by the St. Paul company, have they been accompanied by payment to you by that company of the several amounts shown by such statements?

Answer. They have not; but during that time they have paid me $53,701 69.

Question. Have you ever demanded of that company any of the balances shown by these monthly statements?

Answer. I have frequently called upon them for money, and the payments have been made as I state.

Question. Will you answer the last question and state whether or not when these monthly accounts have been rendered to you, you have demanded of that company the balance shown by such statements?

Answer. I never demanded the payment of that specific sum.

Question. Have any such specific sums been paid you by that company?

Answer. Not the precise sum, but other sums from time to time as above stated. The payments have not been made as payments of those balances, but moneys have been paid from time to time on account.

Question. Has the St. Paul company during this time kept the earnings of the eastern division as a distinct fund, or have they mingled the same with their other moneys?

Answer. I think they have all been kept as one account; that they have been all mingled together.

Question. What balance of money is now in the hands of that

company arising from the operation of this road to and including the 31st day of July, 1865?

Answer.

615 Question. Then the result of this management of the road for the time aforesaid has been to leave in the hands of the St. Paul company all the funds except what were needed by you for actual disbursements from time to time, has it not?

Answer. It has.

Question. Is there any arrangement between you as receiver and that company that they shall pay interest on any balance in their hands?

Answer. There is no such arrangement and none has been.

Question. Has not the St. Paul company during the greater portion of this same time been greatly embarrassed, and has not its paper been protested from time to time?

Answer. It has.

Question. Did you during this time authorize the St. Paul company to make for you as receiver any repairs upon this road? If so, when and where?

Answer. I from time to time directed Mr. Goodrich and Mr. Reasoner to keep the road in repair.

Question. Do you know of your own knowledge when, where, and to what extent this St. Paul company has made such repairs?

Answer. I cannot tell, but must refer to their vouchers, which will show the time, place, and expense.

Question. This statement contains an item as follows, viz: "Repair of road, $23,064 36." Do you know or have you in your possession any data to show whether this item should be precisely what it is charged, or only $20,000?

Answer. I have none of those data, but presume the item is correct, and refer to these vouchers.

Question. Have you ever made any settlement with that company or have you ever made any examination of their vouchers for the purpose of ascertaining whether the several items stated as expenditures, amounting to $71,540 94, were correct?

Answer. I have examined, but they have been examined by men in my employment, and have been certified to as correct.

Question. Have you ever examined the vouchers for any of the twenty-two items of expenditures for the purpose of ascertaining whether the precise amounts given in this statement are cor-

616 rect? If so, specify which items, and state when and where, and with whom you examined the vouchers.

Answer. I can't say that I have ever made any particular personal examination in relation to that matter.

Question. How many, and what persons, and in what capacities are employed by you, who are not also in the employ of the St. Paul company?

Answer. Mr. Hinsdale is the only man, and he is employed as cashier.

Question. Has the St. Paul company made you any payment to

apply on the balance of earnings, as shown by that statement? Make here and now a statement fully of all moneys paid you by the St. Paul company since February 28, 1865, up to the present time.

Adjourned to 2 o'clock p. m.

Resumed at 2 o'clock, Aug. 23, 1865:

Answer.

| 1865. | | |
|---|---|---|
| March | 3 | $2,500 00 |
| March | 6 | 2,000 00 |
| | 14 | 2,000 00 |
| | 15 | 2,000 00 |
| April | 26 | 1,500 00 |
| May | 4 | 445 00 |
| June | 27 | 97 49 |
| | 30 | 159 20 |
| | 30 | 38,000 00 |
| July | 22 | 5,000 00 |
| | | 53,701 69 |
| Aug. | 7 | 10,000 00 |
| | 9 | 20,000 00 |
| | | 83,701 69 |

Question. Of this sum $83,701 69, I understand $48,000 was paid by the St. Paul company to you to apply on the balance found against that company at the last accounting, and was allowed to that company by the court in the adjustment of accounts up to Feb. 28, 1865, leaving $35,701 69 paid by that company to you on account of earnings of the road since February 28, 1865. Is this so?

Answer. Whatever money was paid by the St. Paul company to me as receiver I received as so much paid on account due from
617 them to me. $48,000 of the above amount was paid prior to the making of the order in July last, settling the accounts up to February 28, 1865, and, as I understood, was allowed said company in that settlement, leaving a balance of $35,701 69, of which last amount the Milwaukee and St. Paul company claimed that $31,623 54 was in payment of the net earnings of the eastern division from March 1st to July 31st, 1865, both inclusive, and that the remaining $4,078 15 was to apply on the order fixing the amount to be paid by the St. Paul company to the receiver by the first day of September, 1865. This claim of the St. Paul company was not made until the day after the last payment was made.

Question. At the time these moneys were received was there any agreement between you and the St. Paul company as to their application; or did the St. Paul company, at the time the payments were made, direct to what they should be applied?

Answer. No.

Question. Have the payments charged as disbursements, ten items in all, all been paid by you since the 28th of February, 1865, and have you the vouchers therefor?

Answer. Yes.

Further examination suspended.

H. CROCKER.

James P. Whaling, sworn and examined on behalf of the Milwaukee and Minnesota Railroad Company, testified as follows:

Question. Is paper marked Exhibit No. 1, here shown you, a statement made by you, or under your direction? If yea, state what it contains.

Answer. It is, and it contains a statement of the mileage from Feb. 28 to July 31, 1865, of the Milwaukee and St. Paul Railway Company, and of the eastern division of the La Crosse and Milwaukee railroad.

Question. Does it contain the mileage of locomotives and cars on all of the said road operated by the St. Paul company for the time it purports, including the Horicon road, the Watertown, and western division?

Answer. Yes, sir.

(The statement referred to above is hereto annexed, and marked Exhibit No. 1.)

Question. Has the rolling stock, which was on the road when the receiver was appointed, been used by the St. Paul company indiscriminately on all its railroads during the time mentioned in Exhibit No. 1?

Answer. I presume that is so, but I cannot answer positively.

618 Question. Are you in the employ of the St. Paul company, and if so, in what capacity?

Answer. I am in the capacity of auditor, and the statement, Exhibit No. 1, was made up in my office, and is correct to the utmost of my knowledge and belief.

J. P. WHALING.

Edwin H. Goodrich, sworn and examined as a witness on behalf of the Milwaukee and Minnesota Railroad Company, testified as follows:

Question. Were you sometime, and between what dates, superintendent or manager of the La Crosse and Milwaukee railroad?

Answer. I was from October, 1856, to July 1st, 1865.

Question. Were you from June 13, 1863, to July 1, 1865, in the employ of the Milwaukee and St. Paul Railway Company as superintendent and manager of all the railroads operated by it?

Answer. I was.

Question. Are you acquainted generally with the roads operated by the St. Paul company, and the rolling stock upon them?

Answer. I am.

Question. From February 28th to July 31st, 1865, what would have been a fair price for the use of the rolling stock on that road upon the basis of mileage? Distinguish between locomotives, passenger cars, baggage, and mail cars and freight cars.

Answer. In my opinion, the same rates that have been previously charged since March 1, 1865:

Locomotives, 25 cents per mile.
Passenger cars, 5 cents per mile.
Baggage and mail cars, 3 cents per mile.
Freight cars, 2 cents per mile.

Cross-examined by Mr. Cary, in behalf of the Milwaukee and St. Paul company:

Question. How has the price of gold, as compared with currency, been for that six months, as compared with the period from January 13, 1862, to May 7, 1863?

Answer. I am unable to state as to the price of gold at these different periods.

Question. Was not the price of gold subsequent to May 7, 1863, up to February 28, 1865, much higher than it was from March 1, 1865, to July 31, 1866?

Answer. My recollection is that during a portion of the time it was. I cannot state as to the whole time.

619 Question. Was not the use of the rolling stock from June 1, 1864, to February 28, 1865, worth more than for the succeeding five months, in consequence of the greater difference in the price of gold during the first period than during the last?

Answer. Yes, but, in my opinion, not enough to change the prices I have stated, and particularly in this instance, when the company maintained the same tariff rates that it did when gold was at its highest point.

Question. In the settlement of accounts between railroads is there such an item as car service? and if so, what does it mean?

Answer. Yes, there is such an item. It means money paid or charged for mileage of cars.

Question. What was the price of car service from the 1st March to the 31st July, 1865, as charged by the railroads in this State?

Answer. I know of no charge for car service between any roads except between the Chicago and Northwestern, and the Milwaukee and St. Paul company. The arrangement between these two companies was, that for any excess of mileage by the cars of either company over the cars of the other, such excess should be paid for at the rate of two (2) cents per mile, while I was manager, or up to July 1, 1865.

(The above question and answer was objected in due time by Mr. Carpenter, and objection overruled.)

Witness states that the party running the cars and charging the amount above stated is chargeable with repairs.

EDWIN H. GOODRICH.

Adjourned to Aug. 26, 1865, at 10 a. m.

10 A. M.

Adjourned to 2 p. m.

AUGUST 26, 2 p. m.

Parties present as before.

Erastus A. Patterson being duly sworn and examined on behalf of the defendant, the Milwaukee and Minnesota Railroad Company, testified as follows:

Question. Have you made out a statement of the rolling stock owned and used by the Milwaukee and St. Paul Railway Company between February 28 and July 31, 1865, and is this that statement?

Answer. Yes, it is.

(The statement mentioned is hereto attached, and marked Exhibit No. 2)

Question. Have you made up a statement dividing the rolling stock between the two divisions of the road, according to the division made by the land grant decree as to the original stock upon the basis that the St. Paul company acquired nothing but forty box cars at the sale under that decree, and dividing the rolling stock purchased by the receiver, giving the eastern division such proportion thereof
620 as $121,178 bears to $26,199, and estimating the rolling stock shown in Exhibit No. 2 as follows:

| | |
|---|---|
| Each locomotive | $10,000 |
| Each passenger car | 2,500 |
| Each baggage, mail, and express car | 1,800 |
| Each freight car | 500 |
| Each wood sawing car | 500 |

representing the total value of the rolling stock upon those bases, and is this that statement?

Answer. Yes, it is.

(The statement is hereto annexed and marked Exhibit No. 3.)

Question. Did you make out the statement marked Exhibit No. 1, showing the mileage on the St. Paul company's road, and on the eastern division?

Answer. I did.

Question. Are you in the employ of the St. Paul company, and in what capacity?

Answer. I am, as general book-keeper, and the statements marked Exhibit No. 1 is taken from their books.

| | | |
|---|---|---|
| The respective parties admit that the original rolling stock on the whole road when the receiver was appointed, amounted at cost price, as fixed by former proceedings in this cause to | $569,635 | 78 |
| The 40 box cars mentioned in land grant decree costs | 31,979 | 64 |
| Bal. [claimed to be owned by the Minnesota company.] | 537,655 | 14 |

This erasure made by me by direction of parties when filed. (The erasure in brackets.)

H. L. PALMER.

That the whole amount of rolling stock purchased by the receiver, at cost price is $191,722 87. This sum divided in the proportion of $121,178 to $26,199, gives as results $157,639 00 and $34,083 87.

That the St. Paul company had for Feb. 28 to July 31, 1865, the following rolling stock:

13 locomotives.
10 passenger cars.
6 baggage and mail and express cars.
364 freight cars.
74 flat cars.
1 wood-sawyer car.

Question. Have you made up a statement based upon the mileage as stated in Exhibit No. 1, allowing for locomotives 25 c. per
621 mile; passenger cars 5 cents per mile; baggage, mail, and express three cents per mile; and freight cars two cents per mile; and dividing between the two divisions upon that basis, and upon the basis that the rolling stock is correctly divided in Exhibit No. 3, and is the paper now shown you that statement?

Answer. Yes, it is.

(The paper referred to is hereto annexed, and marked Exhibit No. 4.)

Question. Have you made out a statement showing the total amount of repairs of rolling stock on the road, including the eastern division, from February 28 to July 31, 1865, and dividing that sum between the two divisions upon the basis of Exhibit No. 3, and deducting from the amount chargeable to the Minnesota company the amount charged to that division in the account referred to the auditor, being items marked 8, 9, and 10, amounting to $12,814 66, and is this that statement?

Answer. Yes, and it is.

(The statement referred to is hereto annexed, and marked Exhibit No. 5.)

Cross-examined by Mr. Cary:

Question. Did you make up the statement of operating expenses contained in the account of the receiver filed August 18, 1865, and now before the auditors, from the books of the St. Paul company?

Answer. I did.

Question. State which of the items of said account are for services performed, or expenditures made, or damages done exclusively on the eastern division?

Answer. They are items numbered 4, 5, 6, 7, 12, 13, 14, 15, 17, 18, 19, 21, 24, 25.

Question. What is included in item No. 11, "management of general office?"

Answer. It includes general superintendence, and stationery, and such matters as pertain to the whole line of the road, but does not include agencies or money expended to influence business, and the proportion charged is as 95 miles to the whole number of miles operated by the St. Paul company.

Question. Were all the items of charges in said account actually

and in good faith incurred in the operation of the said road as charged according to the accounts returned to the office?

Answer. They were.

Cross-examined by Mr. Brown:

I made up the account returned and filed by the receiver.
622 This account was carefully and correctly made.

Question. In making up that account did you regard yourself as equally in the employ of the receiver and the St. Paul company, and bound to do justice to both parties?

Answer. Yes.

Direct. In whose employ are you?

Answer. I am in the employ of the St. Paul company; I know no employment for Mr. Crocker; whatever service I perform I perform for the St. Paul company.

Question. Should not the St. Paul company be charged for the use of the proportion of the tools used by that company belonging to the Minnesota company, and about how much?

(Question waived.)

ERASTUS A. PATTERSON.

Adjourned to Monday Aug. 28, 1865, at 10 a. m.

AUG. 28, 1865.

Edwin H. Goodrich, recalled by Mr. Carpenter, testified as follows:

Question. Will you look at Exhibit No. 2, being a list of rolling stock built and purchased by the St. Paul company since June 13th, 1863, and fix value to each class upon the basis of a fair average of the sums paid for the rolling stock of the same class of that which was on the road when the receiver was appointed, and that which was purchased by the receiver?

Answer.—

| | |
|---|---|
| Locomotives, each | $10,000 |
| Passenger cars, each | 2,500 |
| Baggage, mail, and express cars, each | 1,800 |
| Freight, box cars, each | 650 |
| Flat cars, each | 500 |
| Wood-sawyer's car | 500 |

EDWIN H. GOODRICH.

Hans Crocker, recalled and examined by Mr. Brown:

Question. Has there been any change in the arrangements between yourself as receiver and the St. Paul road since the testimony given before the auditor by you at the last reference, as to the management of the eastern division?

Answer. None.

Question. Were the statements made by you then and in your application made by you to the court in September last, correct statements of the arrangements between you and the St. Paul company?

Answer. They were.

Question. Were the book-keepers, treasurer, accountants,
623 and other general officers connected with the offices of the St. Paul company and the receiver, employed for your joint benefit, and are they paid by the receiver and the St. Paul company in the ratio stated by you in your former testimony in proportion to the length of your respective roads?

Answer. They are.

Question. Were the books and stationery, &c., used in keeping the accounts purchased for your joint benefit, and paid for in the ratio above mentioned?

Answer. Yes, sir.

Question. Was it as fully the duty of each officer engaged in keeping accounts and superintending expenditures, &c., to act honestly and faithfully in that capacity in regard to the eastern division, as if employed by you alone?

(Objected to as calling for matter of opinion and hypothetical and leading.)

Answer. Yes.

Question. Had you as full access to the books and papers and accounts as if the St. Paul company had no interest in the same?

(Objected to as above.)

Answer. Yes.

Question. Will you explain what you meant by saying certain vouchers were in the possession of the St. Paul company?

Answer. They are all in possession of the officers employed by me and the St. Paul company.

Question. Has any of the rolling stock beyond what was surrendered, as was stated in your last examination before the auditor, been surrendered to you?

Answer. No.

Question. Has it been in your power to make any other or better arrangement for the management of the eastern division since the time referred to?

Answer. It has not been.

Question. Has that arrangement continued to be in view of the amount of rolling stock under your control the best you could make for the eastern division?

Answer. I think it has been.

Question. Were the vouchers examined and the statement of accounts made out by officers paid by you and the St. Paul company as before stated?

Answer. They were.

624 Question. Were a majority of the local expenses during the time referred to in this account made by officers in the exclusive employment of the receiver?

Answer. The road repair expenses were made by men in the employ of the receiver; but these expenses were ordered by the manager or superintendents employed by the St. Paul company and receiver.

Question. Are the vouchers subject to your order and control, so that you can produce them at any time when wanted?

Answer. They are.

Questions by Mr. Carpenter:

Suppose the St. Paul company should to-day refuse to give you access to these vouchers, could you produce them?

Answer. I suppose I could not.

Question. Are not those vouchers exclusively in the possession of the St. Paul company?

Answer. They are in possession of the officers that I have above stated in the employ of said company and myself.

Question. If you should detect any one of the employees of the St. Paul company cheating you in accounts to-day, could you discharge him without the consent of that company?

Answer. I could not.

Question. When the St. Paul company changed its office from the eastern division down to Michigan street did you not follow them with your office as receiver?

Answer. I did.

Question. Do not the St. Paul company exercise their own discretion in employing, retaining, and dismissing the employees of that company?

Answer. The manager of the St. Paul company does so.

Question. Have you tried to make any other arrangement as to the management of the eastern division than that which is existing; or have you, since June 13, 1863, ever tried the experiment of running the road yourself as receiver?

Answer. I have talked with Mr. Goodrich, the manager of the road, whether it could be ran any cheaper or better; but I have never tried the experiment of running it as a separate road, for the reason that I had not control of the rolling stock sufficient to run it.

Question. Do not the St. Paul company to-day operate it as separate road?

Answer. It is operated as a separate road.

Question. Has it not been since September 1, 1864?

625 Yes, sir.

Question by Mr. Brown:

If you discovered that any employee connected with the eastern division behaved improperly or dishonestly would you allow him to continue his employment so far as the eastern division is concerned?

(Objected to as hypothetical, irrelevant, and calling for prophecy, not fact. Objection overruled. Carpenter excepts.)

Answer. I would not.

Question. If the St. Paul company should persist in retaining in joint employment under the arrangement any dishonest or incompetent officer after you had pointed out to them such dishonesty or incompetency, could and would you not terminate the arrangement with them?

Answer. Yes. I should feel bound to do so, and would so soon as I could.

Question. Is that arrangement with them for any definite time?

Answer. No. I can terminate it any time I please.

Question by Mr. Carpenter:

Is the arrangement between you and the St. Paul company in writing or merely oral?

Answer. Oral.

Question. Has there ever been any written agreements about the management by that company of the eastern division and rolling stock with you as receiver?

Ans. No, sir.

Mr. Carpenter demands all vouchers in possession of the receiver or subject to his control for items 4, 5, 6, 7, 8, 9, and 10, in the account referred, that they be filed by the auditor and returned to the court, and waives the production of the vouchers for the other items of expenditure in said account, and will insist upon his exceptions to these items until they are established by such vouchers or other testimony.

Question by Mr. Cary:

In answer to the questions put by the counsel for the Minnesota company you have answered "yes" to his question "was not the St. Paul company under great embarrassment and its paper going to protest?" Do you know the cause of such embarrassment, and was it temporary merely?

Answer. I suppose the cause of such embarrassment was from building about forty miles of road, purchasing right of way, depot, grounds, and building and elevator, and then the light business
626 resulting from the short crop of 1864, and the low water in the Mississippi river, which prevented the coming forward of wheat from Minnesota and Northern Wisconsin. I suppose the embarrassment to be temporary.

Question. Since the early part of May last have all the expenditures and purchases of said company been paid promptly in cash?

Answer. I understand and believe that the current expenses of the road since that time have been paid monthly.

Question. Has the greater portion of its paper which went to protest been since taken up, and are they now rapidly liquidating the balance?

Answer. I understand that the greater portion of its paper which went to protest has been paid, and that they are now rapidly liquidating the balance.

Question. During the five months from March 1st to August 1st has there at any time been any considerable amount of money in the hands of the St. Paul company arising from the operation of the road during that period?

Answer. I can only refer to the order of the court and my accounts on file.

Question. Are not the manager and superintendent as to the eastern division under and subject to your control the same as they are as to the St. Paul company's road under the control of the president and directors of the St. Paul company?

Answer. They are.

Question. Are not the road master, all station agents, conductors, engineers, and other persons engaged in the operation of the eastern division exclusively in your employ, and subject to your control?

Answer. They are.

Question. Are there any joint employees of the Milwaukee and St. Paul company and the eastern division except the manager and superintendent and the clerks and heads of department here in the general office and the men in the machine shops?

Answer. None.

H. CROCKER.

Adjourned to 29th Aug., 1865, at 2 p. m.

AUGUST 29TH, 2 p. m.

Parties present as before. Mr. Carpenter, on behalf of the Milwaukee and Minnesota Railroad Company, waives the demand made by him for the production of the vouchers of the receiver.

Testimony here closed.

H. L. PALMER.

Aug. 29, 1865.

*Exhibit No. 1.*

Filed August 23, 1865.

H. L. PALMER.

Statement of mileage of rolling stock February 28th to July 31st, 1865, Milwaukee and St. Paul Railway.

| | |
|---|---|
| Locomotives | 402,178 |
| Passenger cars | 382,307 |
| Baggage and mail cars | 205,360 |
| Freight cars | 2,811,475 |

Eastern division, (L. & M. R. R.)

| | |
|---|---|
| Locomotives | 73,705 |
| Passenger cars | 48,826 |
| Baggage and mail cars | 49,708 |
| Freight cars | 196,735 |

Indorsed: "Statement of mileage rolling stock February 28th to July 31, '65. Milwaukee, August 22d, 1865. E. A. Patterson, bookkeeper."

*Exhibit No. 2.*

Filed August 26, 1865.

H. L. PALMER.

Equipment purchased and built by Milwaukee and St. Paul Railway since June 13, 1863:

Locomotives, 13, $10,000; passenger cars, 10, $2,500; baggage, mail, and express, 6, $1,800; freight box cars, 364, $650; freight flat cars, 74, $500; wood sawyers cars, 1, $500, if an ordinary platform car, with temporary covering, which I suppose it to be.

Indorsed: "Equipment purchased and built by M. & St. Paul R'w'y since June 13, 1863. Patterson, book-keeper."

*Statement A.—Exhibit No. 3.*

Filed August 26th, 1865.

H. L. PALMER.

Statement as to the rolling stock belonging to the Minnesota and St. Paul Company, respectively employed from February 28 to February 31, 1865:

| | | Minn Co. | St. P. Co. |
|---|---|---|---|
| Of the old stock | | $537,656 14 | $31,979 64 |
| Purchased by the receiver | $191,722 87 | 157,639 00 | 34,083 87 |
| St. Paul Co.'s present rolling stock, at same prices as the old stock was bo't for: | | | |
| 13 locomotives | 130,000 00 | | |
| 10 passenger cars | 25,000 00 | | |
| 6 baggage cars, mail, and express | 10,800 00 | | |
| 364 fr't | 236,600 00 | | |
| 74 fl't | 37,000 00 | | |
| 1 wood sawyer | 500 00 | | 439,900 00 |
| | 439,900 00 | 695,295 14 | 505,963 51 |

628 *Statement B.—Exhibit No. 4.*

Filed Aug. 26, 1865.

H. L. PALMER.

Statement of the whole cost of mileage in eastern division from Feb'y 28, to July 31, 1865.

| | |
|---|---|
| 73,700 miles, locomotives, 25 cts | $18,425 00 |
| 48,826 miles, passenger, 5 cts | 2,441 30 |
| 49,708 miles, bag, and mail, 3 cts | 1,491 24 |
| 196,230 miles, freight, 2 cts | 3,924 60 |
| | 26,382 14 |

St. Paul co.'s mileage:

| | |
|---|---|
| 402,178 loco's, *a* 25 | 100,544 50 |
| 382,307 passenger, *a* 5 | 19,115 35 |
| 205,360 bag and mail, *a* 3 | 6,160 80 |
| 2,811,475 freight, *a* 2 | 56,229 50 |
| | 182,050 15 |

*Exhibit No. 4.*

Statement of the amount of mileage, expenses chargeable to the respective companies on the eastern division, upon the basis of statement A:

| | Minn. Co. | St. Paul Co. |
|---|---|---|
| E. division, Feb'y 28, 1865, to July 31, 1865 | $15,209 14 | $4,703 00 |
| Same on St. Paul co. roads | 105,350 15 | 76,700 00 |
| | 120,559 29 | 83,403 00 |

Balance due the Minnesotta company from the St. Paul company to July 31, 1865, upon the above basis .... $93,647 15

*Exhibit No. 5.*

Filed Aug. 26, 1865.

H. L. PALMER.

Statement of cost of repairs of rolling stock, February 28, to July 31, 1865, Milwaukee and St. Paul Railway.

| | |
|---|---|
| Locomotives | $49,968 18 |
| Cars | 58,846 61 |
| Tools and machinery | 5,152 85 |
| | 113,967 64 |

Eastern division L. & M. R. R.:

| | |
|---|---|
| Locomotives | $5,565 97 |
| Cars | 6,674 98 |
| Tools and machinery | 573 71 |
| | 12,814 66 |
| 629 | 12,814 66 |
| | 113,967 64 |
| Total cost of rep | 126,782 30 |

| | |
|---|---|
| Dividing this upon the basis of 695,295 14 to 505,963 51, as per statement A, Exhibit 3, shows to Minnesota Co | $73,367 30 |
| To St. Paul Co | |
| Deduct amount charged in account rendered and referred to the auditor for repairs, to E. division stock of $12,814 66, shows chargeable to E. division taken for 73,347 30 | 60,552 64 |

Alterations and erasures made by E. A. Patterson, the witness, before the paper is filed.

H. L. PALMER.

*Schedule A.*

The Milwaukee and St. Paul Railway Co. in act. with Hans Crocker, receiver.

| | | | |
|---|---|---|---|
| | | | Dr. |
| To amount of gross earnings of the eastern division of the La Crosse and Milwaukee railroad from the 28th day of July, A. D. 1865, amounting to the sum of | | $103,164 48 | |
| For use of rolling stock belonging to the owners of the eastern division on its roads for the same period of time | | 93,647 15 | $196,811 63 |
| | | | Cr. |
| By amount expended in the operation of the eastern division of said road for the same period of time | | 71,540 94 | |
| For repairs of rolling stock belonging to eastern division | $73,367 30 | | |
| Less the amount charged by said company against the eastern division for repairs embraced in items Nos. 8, 9, and 10 of the act. filed by the receiver Aug. 18, 1865 | 12,814 66 | | |
| | | 60,552 64 | |
| By amount paid to receiver to apply on earnings for same period | | 31,623 54 | |
| | | | 163,717 12 |
| Balance | | | 33,094 51 |

630 *Schedule B.*

| Hans Crocker, receiver, | Dr. |
|---|---|
| For amount received by you, as receiver, from 28th February, 1865, to July 31st, 1865 | $53,701 69 |
| By amount disbursed as receiver for same period of time, not including any charge or deduction for services as receiver | 47,074 73 |
| Balance in receiver's hands 31st July, 1865 | 6,626 96 |
| Add amount paid to receiver since July 31st, 1865 | 30,000 00 |
| | 36,626 96 |

631 Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

To the honorable the circuit court of the United States for the district of Wisconsin:

In pursuance of an order of reference made in this cause on the 13th day of April, A. D. 1866, a certified copy of which order is hereto annexed, I, Henry L. Palmer, named in the said order, do respectfully report, that on the said thirteenth day of April instant, I issued a summons, requiring the respective parties to attend before me, on the 13th day of April instant, at 2½ o'clock p. m., to proceed upon the examination of the report of Hans Crocker and the exceptions thereto, and caused the same to be served upon the solicitors of the respective parties, which summons, with admission of service thereof, is hereto attached and herewith returned, marked Exhibit No. 1.

That I have been attended by Hans Crocker, esq., the receiver mentioned in the said order, and by James S. Brown, esq., his counsel, by John W. Carey, esq., counsel for the Milwaukee and St. Paul Railroad Company, and by Matt. H. Carpenter and H. M. Finch, esqs., as counsel for the Milwaukee & Minnesota Railroad Company, and that I have taken proofs in regard to the matters referred to me by the said order, in addition to the proofs on file in and the record of this cause, which proofs consist of depositions and exhibits; the exhibits are marked number 1 to number 3 inclusive.

I further certify and report that the said Hans Crocker, receiver, from the first day of August, A. D. 1865, to the twelfth day of April, A. D. 1866, received, and as such receiver is chargeable with and accountable for the sum of two hundred and ninety-two thousand two hundred and seventy-six dollars and fifty-three cents, including the bal-
632 ance in his hands on the 31st day of July, A. D. 1865, as shown by the debit side of the account contained in Exhibit No. 2 hereto annexed, viz: $292,276 53. That during the same pe-

riod of time the said Hans Crocker, receiver, has disbursed in the proper execution of his trust as such receiver, and is entitled to be credited with the sum of one hundred and ninety thousand seven hundred and fifty-three dollars and fourteen cents, as shown by the credit side of the account, Exhibit No. 2, viz: $190,753 14, which deducted from the amount rescinded by him as above stated, leaves a balance in his hands of one hundred and one thousand five hundred and twenty-three dollars and thirty-nine cents, ($101,523 39.)

In the report of the said Hans Crocker, receiver, filed in this cause April 13, 1866, and referred to me, he credits himself with the sum of thirty-eight thousand five hundred and sixty-nine dollars and forty-two cents, being the amount heretofore allowed him by the court for his services as receiver, from June 11th, 1860, to February 28th, A. D. 1865, ($38,569 42,) which sum is a proper credit to the receiver.

The receiver, in his last-mentioned report, also credits himself with the further sum of five thousand five hundred and fifty-five dollars and fifty-five cents, for compensation as receiver from the 1st of March, 1865, to the 10th of April, 1866, ($5,555 54.)

The receiver's compensation for the time mentioned, viz, from March 1st, 1865, to April 10th, 1866, at the rate allowed for prior service, that is to say, five thousand dollars per year, would amount to the sum so credited to himself therefor; and I therefore audit and allow the said sum of five thousand five hundred and fifty-four dollars and fifty-four cents as a proper credit to the receiver. The two sums last mentioned amount in the aggregate to forty-four thousand one hundred and twenty-four dollars and ninety-six cents.
633 ($44,124 96,) which, deducted from the balance in the receiver's hands as above stated, viz, $101,523 39, leaves a balance in the receiver's hands unexpended of fifty-seven thousand three hundred and ninety-eight dollars and forty-three cents, ($57,398 43.)

The receiver also credits himself in his said report, filed April 13, 1866, as follows:

| | |
|---|---|
| By amount of liabilities in suits | $25,000 00 |
| By unliquidated and contingent claims estimated at | 3,000 00 |
| Total | 28,000 00 |

It appears from the testimony that there are twelve ejectment suits pending and undisposed of against the receiver and his tenants for lands belonging to the eastern division of the road, and that there are three suits against the receiver, brought to recover damages sustained on the road, now pending or not finally disposed of, in which the damages claimed amount, in the aggregate, to twenty thousand dollars; a statement of the three suits last mentioned, where pending, their present condition, and the amount claimed in each, is contained in Exhibit No. 3, herewith returned.

It also appears from the testimony, that there are contingent claims against the receiver, growing out of contracts believed to be just, estimated at about three thousand dollars. These contingent claims, whether in suit or not, I neither allow nor disallow, but I leave it for

this honorable court to make such order in the premises as it may deem proper. A statement of the receiver's account as audited and allowed by me, and also exhibiting the contingent claims above mentioned, is hereto annexed and marked Schedule A.

*Rolling stock.*

I further certify and report that in obedience to the order of this court made on the 14 day of April, 1866, directing me to ascertain and report what should be charged for the use of rolling stock, which order or a copy thereof is hereto attached. I notified the
634 parties to appear before me at my office, on the 14 day of April, 1866, as will appear by the notice with proof of service hereto attached and marked Exhibit No. 9. That I have been attended by the same parties by their counsel above named, and that I have taken proofs in regard to the matters referred to me by the said last-mentioned order, in addition to the proofs on file and the records of this cause, which proofs consist of depositions and exhibits hereto annexed and herewith returned. The exhibits are marked number 4 to number 8, both inclusive.

I further certify and report that I find from the testimony, and have ascertained that the whole value of the rolling stock on the roads of the Milwaukee & St. Paul Railway Company, and on the eastern division of the La Crosse and Milwaukee railroad, from the 1st day of August, A. D. 1865, to the 9th day of January, A. D. 1866, was one million four hundred and ninety-three thousand and forty-two dollars and sixty-three cents, ($1,493,042 63.) That of said rolling stock six hundred and ninety-five thousand two hundred and ninety-five dollars and fourteen cents in value was owned by the owners of the eastern division of the said La Crosse & Milwaukee railroad, viz, $695,295 14; and seven hundred and ninety-seven thousand seven hundred and forty-seven dollars and forty-nine cents in value thereof was owned by the Milwaukee & St. Paul Railway Company. That the whole cost of value of mileage or value of the use of rolling stock on the said eastern division of the La Crosse and Milwaukee railroad, for the period of time above mentioned, was forty thousand two hundred and eighty-one dollars and eighty-two cents, ($40,281 82,) as shown in and by Exhibit number 4; of this amount, 466-1000, that is to say, eighteen thousand seven hundred and seventy-one dollars and thirty-three cents, ($18,771 33,) was made and earned by the proportion of the rolling stock belonging to the owners of the eastern division of the said road, and twenty-one thousand five hundred and ten dollars and forty-nine cents thereof was made and earned by the proportion of the said rolling stock
635 owned by the Milwaukee and St. Paul Railway Company, viz, $21,510 49. That for the same period of time the whole cost of mileage or value of the use of rolling stock on the roads of the Milwaukee and St. Paul Railway Company was two hundred and fifty thousand three hundred and eighty-six dollars and ninety-one cents, ($250,386 91,) as is also shown by said Exhibit No. 4. Of this amount of mileage or use of rolling stock, one hundred and sixteen thousand six hundred and eighty dollars and thirty cents was made

and earned by the proportion of the rolling stock owned by the owners of the eastern division of the La Crosse and Milwaukee railroad, viz, ($116,680 30.) And one hundred and thirty-three thousand seven hundred and six dollars and sixty-one cents thereof, ($133,706 61,) was made and earned by the proportion of the said rolling stock owned by the Milwaukee and St. Paul Railway Company. I have further ascertained and report that the total cost of the repairs of all the rolling stock belonging to both roads from the first day of August, A. D. 1865, to the 9th day of January, 1866, was one hundred and forty-eight thousand three hundred and twenty-eight dollars and nineteen cents, ($148,328 19,) which, divided in the proportion of $695,295 14 to $790,747 49 or 466-1000 to 534-1000, gives sixty-nine thousand one hundred and twenty dollars and ninety-four cents ($69,120 94) as the amount thereof chargeable to the eastern division rolling stock.

The Milwaukee and St. Paul Railway Company ought therefore to be charged for the use of the rolling stock belonging to the owners of the eastern division for the period of time from the first day of August, 1865, to the 9th day of January, A. D. 1866, the sum of one hundred and sixteen thousand six hundred and eighty dollars and thirty cents ..... $116,680 30

Less the value of the use of rolling stock belonging to the Milwaukee and St. Paul Railway Company on the eastern division, for the same time, above ascertained to be twenty-one thousand five hundred and ten dollars and forty-nine cents ..... 21,510 49

Balance ..... 95,169 81

636 The Milwaukee and St. Paul Railway Company is entitled to a credit against the eastern division in this account for the cost of the repairs on the rolling stock belonging to the eastern division, for the same period of time, ascertained above to be sixty-nine thousand one hundred and twenty dollars and ninety-four cents ..... $69,120 94

Less the amount heretofore charged to the eastern division by the Milwaukee and St. Paul company, for such repairs, and contained in the items numbered 5, 6, and 7, in the account marked Exhibit No. 3, amounting to twenty-one thousand nine hundred and sixty-two dollars and seventy cents ..... 21,962 70

47,158 24

Net balance ..... 48,011 57

Leaving a net balance of forty-eight thousand and eleven dollars and fifty-seven cents, ($48,011 57,) which I have ascertained and report should be charged to the Milwaukee and St. Paul Railway Company for the use of the rolling stock belonging to the eastern division of the La Crosse and Milwaukee railroad, from August 1st, A. D. 1865, to January 9, A. D. 1866, over and above the amount expended by the Milwaukee and St. Paul Railway Company for repairs on the said rolling stock.

Milwaukee, April 16, 1866.

H. L. PALMER.

*Schedule A.*

Mentioned and referred to in the annexed report and forming a part thereof, viz:

| Hans Crocker, receiver. | | Dr. |
|---|---|---|
| 637 1866 To amount of balance in his hands August 1st, 1865, and amount which came to his hands as receiver from August 1st, 1865, to April 12th, | | $292,276 53 |
| **Cr.** | | |
| By amount disbursed during same period of time as above | $190,753 14 | |
| By amount heretofore allowed him for compensation as receiver, from 11th June, 1860, to 28th February, 1865 | 38,569 42 | |
| By amount of salary from Feb. 28, 1865, to April 10th, 1866, at same rate | 5,555 54 | |
| | | 234,878 10 |
| Balance | | 57,398 43 |

*Contingent claims.*

| | |
|---|---|
| Damages claimed in suits against the receiver, mentioned more particularly in Exhibit No. 3 | $20,000 |
| Unliquidated contingent claims against the receiver, as estimated by the witness | 3,000 |
| Total | 23,000 |

April 16, 1866.

H. L. PALMER.

638 Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

Examination of witnesses taken in pursuance and by virtue of an order of reference in the above-entitled cause, on the thirteenth day of April, A. D. 1866.

FRIDAY, *April 13th*, 1866.

H. L. Palmer, special commissioner named in said order, James S. Brown, solicitor for receiver, M. H. Finch, counsel for the Milwaukee and Minnesota Railroad Company.

William L. Hinsdale, sworn and examined on behalf of receiver, testified as follows:

I have been the cashier for the receiver since the first of August last.

Question. Have you, as such cashier, under the orders of the receiver, practically received and disbursed all sums under the control of the receiver?

Answer. Yes; all that I know anything about; so far as I know and understand, I have.

Question. Have you kept faithful accounts of the funds disbursed by the receiver?

Answer. I have.

Question. Is the usual mode of disbursement by the receiver through you as cashier?

Answer. Yes.

Question. Did you make out from your books this account marked exhibit number two, which I now present to the auditor?

Answer. I did.

Question. Is this account, as made out by you, a just and correct account from the books as kept by you?

Answer. It is.

Question. Is it an honest and true account?

Answer. It is.

639 Question. Are you aware that there are unliquidated claims against the receiver growing out of contracts express or implied?

Answer. Yes; I am.

Question. Were claims presented against the receiver just, as you believe, after he made out his last final report?

Answer. There were such claims presented.

Question. What, in your opinion, would be a fair amount to protect the receiver against just claims arising out of contracts not yet adjusted or paid?

Answer. I should think at least three thousand dollars.

(Mr. M. H. Finch, for the Milwaukee and Minnesota Railroad Company, objected, in due time, to the last two questions and the answers thereto as immaterial, irrelevant, and incompetent. Objection overruled and exceptions noted.)

Cross-examined by Mr. Finch:

Question. Do you know anything, of your own personal knowledge, of the various items in this account?

Answer. I know the fact that those receipts and disbursements have occured.

Question. Under date of September, 1865, is the following items, legal expenses, foreclosure 2d mortgage, &c., $19,558 21. Do you know of your own personal knowledge, the items upon which that statement was made?

Answer. I know some of them are paid on order of court, the greater portion of it I know was.

Question. What proportion was paid on order of court?

Answer. I should think three-quarters of them were to my knowledge.

Question. What is included under the term legal expenses?

Answer. Expenses incurred in suits of various sorts.

Question. Under date November, 1865, is an item "legal expenses, $1,095 45." Do you know for what purpose that item was paid, and on what suit?

Answer. I don't remember, without examination; we have a voucher for it.

Question. Under date January, 1866, is the item "legal expenses, foreclosure 2d mortgage, $17,796 36." Do you know the items that make up that sum total.

640 Answer. I don't remember the items now; there is a variety of items included in it.

Question. Was that amount paid by the order of the court?

Answer. It was.

Question. Under date of April, 1866, is the item "legal expenses, $5,177 35." To whom was that amount paid?

Answer. I can't remember now; the vouchers will show it.

Question. Do you know anything of the particular items going to make up this statement marked Exhibit 2, except from the books and the vouchers?

Answer. That is all I know about them is from the books and vouchers.

Question. In whose handwriting is Exhibit No. 2?

Answer. It is in my own handwriting.

Question. How, and in what manner, was this Exhibit No. 2 made up by you? was it by taking the books and vouchers, item by item, and carefully compared, item by item, by you before extending the aggregate?

(Mr. Brown here appears and objects, that Mr. Carpenter and Mr. Finch were not present until the examination of Mr. Hinsdale and Mr. Whaling were concluded, and that they have no right of cross-

examination, but must recall the witness, as their witnesses, in order to examine them; that such right should not be accorded because the order to report on Monday was procured by the Milwaukee and Minnesota company, and it is evident that the only object of cross-examination is delay. Objection overruled and exception noted.)

Answer. It was taken from my books as entered on the book. The aggregate for each class of expenditure, for each month, is made up of the items of that class of expenditure for the month. The items of expenditure were compared with the vouchers before they were entered upon the cash book, and the items in the account marked Exhibit No. 2 were taken from the cash book.

Question. Are the vouchers for the items of legal expenses now in the hands of the receiver, or in your hands as the cashier of the receiver?

Answer. They are in my hands as cashier of the receiver.

641 Question. Will you produce here and now to the auditor the vouchers covering all the items under the head of legal expenses as those expenses appear upon Exhibit No. 2?

Answer. I can produce them.

(The counsel for the receiver now insists, for the purpose of understanding what those items are.)

Question. Have you the voucher for the item in Exhibit No. 2, under date of August, 1865, "legal expenses, $2,500?"

(Objected to by Mr. Brown, the time is limited within which this report must be made; Mr. Hinsdale has said he has all the vouchers; the last question required him to produce them, and he has produced them all; and asking separate questions as to each, when there is a general question as to all, is merely wasting time already limited by the court, and is depriving the receiver of a chance to prove his accounts as required by the court. Overruled and exceptions.)

Answer. I have not the voucher, but I have a memorandum stating that the voucher was taken out of the package by H. Crocker, Jan'y 12, 1865. I have had the voucher.

(Mr. Brown here states that he gave such voucher, and that he has been paid in full, in accordance with the order of the court dated July 18, 1865. The statement objected to by Mr. Finch as not evidence. Objection sustained.)

Question. Do you know, of your own knowledge, for what services the said $2,500 was paid?

Answer. I do not.

Question. Under the head of September, 1865, is an item "legal expenses, foreclosure 2d mortgage, &c., $19,558 21." Have you the voucher for that item?

Answer. I have the voucher.

Question. Will you state the items in those vouchers making up the said aggregate?

Answer. James S. Brown, balance of $1,600 allowed him by order of the court, $600 00. The receipt is dated September, 6, 1865. Next an item paid Thomas L. Ogden, pursuant to order of court,

dated July 18, 1865. Receipt dated September 6, 1865;
642 amount, $2,500. Next, two receipts of A. Scott Sloan, amounting in the aggregate to $867 90 costs of suit, dated Sept. 7, 1865. Next, receipt for money paid to Thomas Ewing, $4,000 00, for counsel fees paid per order of court, 18th July, 1865; receipts in duplicate, one dated Sept. 16, 1865, and one dated Sept. 20, 1865. Next receipt of J. M. Carlisle, without date, for $4,000, for counsel fees allowed by order of court dated July 18, 1865. Next, a note to Cary and Pratt, paid April 2d, 1864, for $1,000. Next, a receipt from Cary and Pratt for $1,000 paid August 12, 1865. Next a draft of Cary & Pratt on H. Crocker, receiver, dated 22 July, 1862, for $1,000, payable 90 days after date, accepted and stamped paid, October 27, 1862.

Receipt of Cary & Pratt for $4,590 31, dated Sept. 2d, 1865. These payments to Cary & Pratt make up the amount of $7,590 31, being part of amount alllowed by H. L. Palmer, auditor. These items altogether, make up the aggregate of $19,558 21, contained in Exhibit No. 2.

Question. Under date November 16, 1865, is an item "legal expenses, $1,095 45. For what services was this item?

Answer. It is composed of three items, a receipt of Brown & Pratt for $1,000, dated Nov. 28, 1865, on account of services rendered to H. Crocker, receiver.

Also receipt of A. Scott Sloan, dated Nov. 30, 1865, for $60 45, clerk's fees.

Also a receipt from John Dimond, dated Nov. 8th, 1865, for $35 00, for witness fees, making in the aggregate $1,095 45.

Question. Under date of December, 1865, is the item "legal expenses," $845 53. State to whom and for what services that sum was paid.

Answer. It was paid to Smith & Solomon for services and disbursements in several suits. The receipt is dated December 30, 1865.

Question. Under date of January, 1866, is an item legal expenses foreclosure 2d mortgage, $17,796 36. To whom and for what was that paid?

Answer. It was paid to Russell Sage as attorney in fact for James T. Soutter, trustee, and in pursuance of the order of court dated July 18, 1865, and the receipt is dated January 12, 1866.
643 The item of $91 75, under same date is money paid Levi Hubbell for services defending suit 2, P. Olin, a conductor on the road, under the receiver, and expenses.,

Question. Under head of April, 1866, is an item "legal expenses, $5,177 35." To whom and for what was this item paid?

Answer. First, a note dated 9th September, 1862, payable 90 days from date, signed by H. Crocker and payable to Levi Hubbell, for five hundred dollars, receipted on the back, December 11, 1862.

Also a receipt from Levi Hubbell for $300 for professional services, dated January 24, 1862.

Adjourned to 14, 1866, at 9 a. m.

Parties present as before.

William L. Hinsdale cross-examination continued :

Question. You have given the two items of payment to Judge Hubbell; state the balance of the items making up the said sum of $5,177 35.

Answer. There is an account of Emmons Taylor, consisting of drafts and receipts commencing in 1860 and ending in November, 1865, for legal services and disbursements, their aggregate payments made to him amounting to $1,727 35; the last payment to Mr. Taylor was made Jan'y 17, 1866, and the first payment was made in 1860.

Also amount paid to Rice & Brown for legal services, $50. Receipt dated April 12, 1866.

Also cash paid Brown and Pratt for $2,600. Receipt dated April 10, 1866.

Question. Under date of April, 1866, is an item "operating expenses, $3,000." Do you know to whom and for what that item was paid?

Answer. Yes, sir; consists of amount paid W. L. Hinsdale for services as cashier for Crocker, receiver, from July 1st, 1863, to April 1st, 1866, at $1,000 per year, amounting to $2,750.

Also amount paid to Dwight W. Keys, services making statements and sundry accounts for receiver to be used in court during the years 1863 and '4, amounting to $250, paid and receipt dated April 12, 1866.

Direct examination resumed :

644 I now have the voucher for the $2,500 paid to Jas. S. Brown; it was paid pursuant to the order of court dated July 18, 1865, and the receipt is dated August 29, 1865.

Question. I notice several items where the vouchers show payments some time ago. Will you state whether those items have ever, before they were entered in the account now under examination, been charged in account by Mr. Crocker or entered upon his books as a charge?

Answer. They have never been entered before.

Question. I notice payments made a year or two ago to Cary & Pratt, as appears by their draft and voucher. Will you state whether in paying them the amount allowed to them by the court by the order of July 18, 1865, those vouchers were applied to and formed part of that amount?

Answer. I can't tell any further than appears by the receipts as I have stated above.

Question. Were your services during the time mentioned by you as cashier for Col. Crocker fairly worth the $2,750, received by you therefor?

Answer. I consider that sum a fair charge.

Question. Did all the sums received and disbursed during that period pass through your hands?

Answer. They did.

Question. Have you received any other compensation for those services?

Answer. I have not.

The two accounts marked respectively Exhibits No. 2 and No. 3, hereto annexed, are now offered and read in evidence.

W. L. HINSDALE.

William L. Hinsdale recalled:

Question. In keeping your accounts and making out your statements for the receiver, have you made any rests in consequence of the several accountings of the receiver before the auditor and the orders of the court confirming the accounts, or have you continued the accounts charging all sums received and crediting all sums paid out?

Answer. I have not made any rests in the receiver's account in consequence of the several accountings of the receiver before the auditor and the orders of the court confirming the account.

645 I have kept a continuous account of the receipts and disbursements.

Question. Does the $44,867 31 stated in the account marked Exhibit No. 2 as the balance in the hands of the receiver on the 31 day of July, 1865, exhibit the correct balance as the result of all the operations of the receiver on hand on that day?

Answer. It does.

Question. Is the $30,000 charged to the receiver in this account marked Exhibit No. 2, as received by the receiver in the month of August, 1865, the only sum of $30,000 received during that month, and is it the same charged to him on his last accounting before the auditor as received since the 31st day of July, 1865?

Answer. It is.

W. L. HINSDALE.

James P. Whaling, sworn and examined on behalf of the receiver, testified as follows:

I am auditor of the Milwaukee and St. Paul Railway Company.

Question. Were the accounts of the Milwaukee and St. Paul Railway Company in connection with the eastern division of the road, and then operating of the same under Col. Crocker, audited and controlled by you?

Answer. They have been for the last two years.

Question. Was this account of operating expenses, marked Exhibit No. 3, made out by you and under your supervision?

Answer. It was made out under my supervision.

Question. Is that account a correct statement of the receipts and operating expenses of the eastern division of the La Crosse railroad from the 1st August, 1865, to the 9th of January, 1866, at which time the road passed out of the hands of the receiver?

Answer. It is.

J. P. WHALING.

646 Rufus A. Wilder, sworn and examined on behalf of the receiver, testified as follows:

I am the general manager of the Milwaukee and Minnesota Railroad Company.

Question. Were there upon the track when it was delivered to the Minnesota company by the receiver large amounts of wood?

(Mr. Finch objects to the question as incompetent and irrelevant. Objection overruled and exception.)

Answer. There was wood upon the track; I can't tell what amount; there was considerable; but I did not go on the whole track when we took possession, and can't therefore tell the quantity.

Question. Has the wood or any portion of been used by your company in running their trains?

(Objected to as above, and same ruling and exceptions.)

Answer. No portion of it has been used by our company to my knowledge.

R. A. WILDER.

Hans Crocker, sworn and examined in his own behalf, testified as follows:

Question. Among the vouchers exhibited to the auditor are certain vouchers for money paid to Levi Hubbell. Will you state what the nature of his claim was and whether or not it was a just charge against the receiver?

Answer. His claim was for professional services rendered by him as counsel and attorney for the receiver. I think it was just and proper.

Question. I find similar vouchers for a payment made to Rice & Brown. Will you state the nature of their claim, and whether or not it was just?

Answer. They were employed by me to defend a suit in Monroe circuit court, brought against me by one Jacob Lutz, whose leg was was broken on the railroad. That suit is now transferred to the Milwaukee county circuit court, and their services having terminated, I paid them. This charge was a just charge, and I wish to say that I consider it a mighty reasonable charge considering they were lawyers.

Question. There are similar vouchers from Emmons Taylor.

647 Will you state the nature of his services and whether or not they were just?

Answer. They were for services rendered and expenses paid for a period of about five years, for me as receiver or for the road as an attorney at Portage, and they were just and proper; they were for services in suits for right of way, damages to property, and prosecutions for obstructing the track. His account as rendered amounted to about $325 more. I disallowed that much of the account because I thought that part of it belonged to the St. Paul company to pay.

Question. I notice in your account, under the head of "legal expenses," large sums of money paid out. Will you state whether those

items include all the sums which by the order of the court of July 18, 1865, you were directed to pay?

Answer. They do; they were all paid by me.

Question. When did you surrender possession of the eastern division to the Milwaukee and Minnesota company?

Answer. The 9th day of January, 1866.

H. CROCKER.

Wallace Pratt, sworn and examined on behalf of the receiver, testified as follows:

I made out the account referred to in the testimony of William L. Hinsdale, of Brown & Pratt, against the receiver; the aggregate was $3,600.

Question. Will you state what the services were and their value?

Answer. The first charge on the bill was $1,000 for services at the July term, 1865, of the United States court upon the argument of the exceptions to the report of the auditor, and included all the services rendered for the receiver at that term. There was also a charge of $300 for services rendered to the receiver at the September term of the court; there was also a charge of $1,200 for services in defending and preparing for trial twelve ejectment suits brought against the receiver or his tenants to recover possession of the depot and elevator property in the second ward, Milwaukee. These suits are now
648 pending in the circuit court, Milwaukee county, and are upon the calendar for trial at the next term, and are fully prepared for trial. They were upon the calendar for trial at the last term, and also at the term preceding the last, and were continued on application of the plaintiffs. The preparation of these cases for trial, preparing briefs, &c., has required a large amount of time and labor. There is also an item of $100 for services in the case of Joseph Leutz against the receiver, a suit now pending in the circuit court of Milwaukee county. This is a suit brought against the receiver to recover damages to the amount of $10,000 for the breaking of plaintiff's leg by the train of cars on the road while in the possession of the receiver. There is also an item of $1,000 for counsel and advice, examining titles, payment of taxes, attending to transfer of eastern division and other property to the Milwaukee and Minnesota company, and a variety of other services rendered to the receiver during the past year, and not included in the foregoing items of charges. I consider these charges proper and just. I am a practicing attorney, and one of the firm of Brown & Pratt, attorneys and counsellors.

WALLACE PRATT.

Hans Crocker, recalled, testified:

The paper now presented, thereto attached and marked Exhibit No. 3, is a statement of suits brought against me as receiver, and of the amount of damages claimed in each of them, and of their present condition, but does not embrace the contingent liability for fees and costs.

H. CROCKER.

649 Erastus A. Patterson, sworn and examined on behalf of the Milwaukee and Minnesota Railroad Company, testified as follows:

I am auditor of the Milwaukee and Minnesota Railroad Company. I was, for a year previous to the first of February last, a general accountant in the office of the Milwaukee and St. Paul Railway Company. J. P. Whaling is auditor in the office of the Milwaukee and St. Paul Railway Company. I and Mr. Whaling have examined to-day the accounts of mileage of the La Crosse railroad and other roads operated by the St. Paul Railway Company for the period of time extending from July 31st, 1865, to January 9th, 1866. The statement hereto annexed and marked Exhibit No. 4, is a statement of the cost of rolling stock in use on the roads during the time above-mentioned. The statement above-mentioned is read in evidence. The paper marked Exhibit No. 5 is a statement of the cost of mileage of the rolling stock in use on the road during that period. The statement is read in evidence. Paper marked Exhibit No. 6 is a statement of the cost of repairs of rolling stock, tools, and machinery in use on the road during the same period, (the statement, Exhibit No. 6, is read in evidence and is hereto annexed.) The paper marked Exhibit No. 7 is a statement of rolling stock purchased and built by the St. Paul company during the same period, (this statement is read in evidence and is hereto annexed.) It is stipulated by the parties before me that the testimony taken on the last preceding reference in relation to the value of mileage for the period covered by that reference may be considered as taken on this reference and as applicable to the value of mileage for the period covered by this reference. The statements contained in Exhibits No. 4 and 5 show the amount due from the Milwaukee and St. Paul Railway Company for use of rolling stock during the above period belonging to the eastern division upon the same principle as that adopted by the auditor on the last reference in that behalf, the amount being $48,011 57.

ERASTUS A. PATTERSON.

650 James P. Whaling, recalled by Mr. Carpenter, testified:

I am auditor in the office of the Milwaukee & St. Paul Railway Company; the statements marked Exhibits Nos. 6 and 7 are made out by me and are correct. The statement marked Exhibit No. 8 is a correct statement of the mileage of rolling stock on the La Crosse & St. Paul railroad for the period of time from July 31st, 1865, to January 9th, 1866.

(The statement is read in evidence and is hereto annexed.)

J. P. WHALING.

*Exhibit No. 2.*

April 13, 1866.

H. L. PALMER, *Sp'l Com'r.*

Statement of H. Crocker, receiver—receipts and disbursements from August 1st, 1865, to April 10, 1866, inclusive.

| | | Receipts. | Disbursements. |
|---|---|---|---|
| 1865. | | | |
| | 1. Balance reported July 31, 1865 | $44,867 31 | |
| August | 2. Milw. and St. P. R'way Co | 30,000 00 | |
| September | 3. Milw. and St. P. R'way Co | 55,331 65 | |
| October | 4. Milw. and St. P. R'way Co | 50,461 34 | |
| 1866. | | | |
| January | 5. Milw. and St. P. R'way Co, 2d mortgage coupons. | 62,440 00 | |
| April | 6. Milw. and St. P. R'way Co | 48,789 16 | |
| | Pay roll ac, Dec. 31 | 387 07 | |
| | | 292,276 53 | |
| 1865. | | | |
| August | 8. State tax on earnings 1864 | | $21,330 36 |
| | 9. Encumbrances east. div. (city taxes) | | 63 45 |
| | 10. Legal expenses | | 2,500 00 |
| | 11. 1st mortgage coupons | | 1,997 30 |
| | 12. Milw. city coupons | | 1,045 70 |
| September | 13. Operating expenses | | 6 00 |
| | 14. Encumbrances east. div. (taxes) | | 175 76 |
| | 15. Legal expenses, forclosure 2d mort., &c | | 19,558 21 |
| | 16. 1st mtge. coupons | | 704 76 |
| | 17. Milw. city coupons | | 8,184 66 |
| October | 18. Right of way east. div'n | | 611 00 |
| | 19. 1st mtge. coupons | | 192 07 |
| 651 | 20. Milw. city coupons | | 799 95 |
| November | 21 Legal expenses | | 1,095 45 |
| | 22. Encumbrances east. div'n (taxes) | | 127 86 |
| | 23. 1st mtge. coupons | | 35,084 37 |
| | 24. Milw. city coupons | | 1,095 84 |
| December | 25 Loss and damage | | 98 76 |
| | 26 Operating expenses | | 51 00 |
| | 27. Legal expenses | | 845 53 |
| | 28. 1st mtg. coupons | | 2,936 20 |
| | 29. Milw. city coupons | | 75 25 |
| 1866. | | | |
| January | 30. Operating expenses | | 229 00 |
| | 31. Legal expenses, foreclosure 2d mtge | | 17,796 36 |
| | 32 Legal expenses | | 91 75 |
| | 33. 1st mtge coupons | | 666 66 |
| | 34 Milw. city coupons | | 33 33 |
| | 35. 2d mtge. coupons | | 62,400 00 |
| | | 292,276 53 | 179,796 58 |
| February | 26. Encumbrances east. div. (taxes) | | 221 14 |
| | 37. Operating expenses | | 32 25 |
| | 38. 1st mtge coupons | | 153 59 |
| | 39. Milw city coupons | | 391 30 |
| March | 40. Operating expenses | | 4 00 |
| | 41. 1st mtge. coupons | | 38 10 |
| | 42. Milw. city coupons | | 16 68 |

*Exhibit No.* 2.—Continued.

| | | Receipts. | Disbursements. |
|---|---|---|---|
| 1866. | | | |
| April..... | 43. Operating expenses..... | ..... | 3,000 00 |
| | 44. Encumbrances east. div. (taxes)..... | ..... | 1,863 66 |
| | 45. Legal expenses..... | ..... | 5,177 35 |
| | 46. 1st mtge. coupons..... | ..... | 43 80 |
| | 47. Milw. city coupons..... | ..... | 14 71 |
| | | | 190,753 14 |
| | Balance April 10, 1866..... | ..... | 101,523 39 |
| | | 292,276 53 | 292,276 53 |

652 *Exhibit No.* 3.

April 13, 1866.

H. L. PALMER, *Auditor.*

Statement of the earnings and expenditures of the eastern division La Crosse and Mil. R. R. from August 1st, 1865, to January 9th, 1866.

Earnings:

| | |
|---|---|
| From freight..... | $170,551 78 |
| From passengers..... | 41,906 81 |
| From Mails, rents, and Miscell..... | 4,788 66 |
| | 217,247 25 |

Operating expenses:

| | |
|---|---|
| Repairs of track..... | $19,952 52 |
| Repairs of bridge..... | 604 18 |
| Repairs of fences..... | 210 02 |
| Repairs of buildings..... | 2,529 25 |
| Repairs of locomotive..... | 9,587 59 |
| Repairs of cars..... | 11,866 80 |
| Repairs of tools and machinery..... | 1,008 31 |
| Management and gen'l offices..... | 6,045 69 |
| Station service..... | 10,463 51 |
| Conductors, baggage, and brakemen..... | 4,305 83 |
| Train and station supplies..... | 1,410 59 |
| Engineers, firemen, and wipers..... | 7,544 33 |
| Oil and waste..... | 2,783 34 |
| Fuel consumed..... | 21,392 67 |
| Loss and damage of fr't and baggage..... | 830 97 |
| Miscellaneous expenses..... | 141 80 |
| Animals killed..... | 244 43 |

| | |
|---|---|
| Telegraph line | 67 44 |
| Rents | 25 00 |
| U. S. revenue tax | 5,529 14 |
| Printing and advertising | 708 65 |
| Revenue stamp ac | 241 07 |
| Renewal of track | 11,336 57 |
| | 118,329 70 |

Recapitulation:

| | |
|---|---|
| Gross earnings | $217,247 25 |
| Total expenses | 118,329 70 |
| | 98,917 55 |

653 *Exhibit No.* 3.

April 14, 1866.

H. L. PALMER, *Sp'l Com'r.*

Statement of suits pending ag'st the undersigned as receiver for injuries done to persons.

1. Joseph Lutz, of Monroe county, claims ten thousand dollars for injuries done to him, whereby he lost a foot. This suit was originally brought in the Monroe circuit, but has since been transferred to the Milwaukee circuit. The amount first claimed was $5,000, but upon and amended complaint the amount now claimed is $10,000.

2. Peter Roth, adm'r, brings suit against the undersigned as receiver for killing Matthias Schuh. The amount claimed is $5,000, being the amount fixed by statute. On the trial of this case in the circuit court of Milwaukee the plaintiff was non-suited, but has since made and entered and filed exceptions for the purpose of appealing the case to the supreme court.

3. Frans Loif, adm'r, brought suit against the undersigned as receiver for the killing of Nicholas Loif, claimed the damages allowed by statute, $5,000. In this case a non-suit was granted by the court, and it has been moved to the supreme court on exceptions.

14 April, 1866.

H. CROCKER, *Rec.*

*Exhibit No. 4.*

H. L. PALMER, *Auditor.*

April 14, 1866.

Statement of the cost of rolling stock Milwaukee and St. Paul railroad and eastern division L. and M. R. R., January 9th, 1866.

| | | Minn. co. | St P. co. |
|---|---|---|---|
| Stock taken possession by receiver | | $537,656 14 | $31,979 64 |
| Purchased and built by receiver | | 157,639 00 | 34,083 87 |
| Purchased and built by St. P. co., July 31, '65 | | | 439,900 00 |
| Purchased and built July 31, '65, to Jan. 9, '66: | | | |
| Locomotives, 9 | $182,383 98 | | |
| Passenger cars, 2 | 11,000 00 | | |
| Platform cars, 4 | 3,000 00 | | |
| Freight cars, 90 | 95,400 00 | | |
| | | | 291,783 98 |
| | | 695,295 14 | 797,747 49 |

Statement of the division of mileage cost on above basis.

| | E. d. prop. | St. P. co. |
|---|---|---|
| Whole cost on east'n div'n, $40,281 82, 466-1000 and 534-1000 p. ct. | $18,771 33 | $21,510 49 |
| Whole cost on St. P. co., $250,386 91, 466-1000 and 534-1000 p. ct. | 116,680 30 | 133,706 61 |

Statement of the division of repairs on above basis.

| | E. d. prop. | St. P. co. |
|---|---|---|
| Whole cost of repairs, $148,328 19, 466-1000 and 534-1000 p. ct. | $69,120 94 | $79,207 25 |

| | | |
|---|---|---|
| Cost of mileage E. d. stock on St. P. co. road | | $116,680 30 |
| Less of mileage St. P. stock on E. div. | | 21,510 49 |
| Bal. due E. d. stock on mileage | | 95,169 81 |
| Cost of repairs of E. d. stock | $69,120 94 | |
| Less am't charged e. d. for repairs | 21,962 70 | |
| | | 47,158 24 |
| | | 48,011 57 |

655 *Exhibit No. 5.*

H. L. PALMER, *Auditor.*

April 14, 1866.

Statement of mileage of rolling stock on eastern div'n (L. and M. R. R.) and Milwaukee and St. Paul railway, July 31, 1865, to Jan'y 9, 1866.

Eastern division L. and M. r'r'd:

| | Miles. | Per mile. | |
|---|---|---|---|
| Locomotives | 86,255 | 25c. | $21,563 75 |
| Passenger cars | 51,430 | 5c. | 2,571 50 |
| Baggage cars | 25,230 | 3c. | 756 90 |
| Mail and express cars | 23,095 | 3c. | 692 85 |
| Freight cars | 734,841 | 2c. | 14,696 82 |
| | | | 40,281 82 |

Milwaukee and St. Paul railway:

| | Miles. | Per mile. | |
|---|---|---|---|
| Locomotives | 517,505 | 25c. | $129,376 25 |
| Passenger cars | 488,070 | 5c. | 24,403 50 |
| Baggage cars | 124,224 | 3c. | 3,726 72 |
| Mail and oxpress cars | 100,120 | 3c. | 3,003 60 |
| Freight cars | 4,493,842 | 2c. | 89,876 84 |
| | | | 250,386 91 |

| | |
|---|---|
| Wil. and St. P. | $250,386 91 |
| East'n div'n | 40,281 82 |
| Total cost | 290,668 72 |

656 *Exhibit No. 6.*

H. L. PALMER, *Auditor.*

April 14, 1866.

Statement of repairs of rolling stock and tools and machinery of the M. and St. P. r'y, and the eastern division of La Crosse and Milwaukie R. R. from August 1st, 1865, to January 9, 1866.

| La Crosse and Milwaukee. | | Milwaukee and St. Paul. | |
|---|---|---|---|
| Repairs of locomotives | $9,087 59 | Repairs of locomotives | $52,760 68 |
| Repairs of cars | 11,866 80 | Repairs of cars | 67,332 00 |
| Repairs tools and machinery | 1,008 31 | Repairs tools and machinery | 6,272 81 |
| | 21,962 70 | | 126,365 49 |

E. and O. E.—Milwaukee, April 14, 1866.

*Exhibit No.* 7.

H. L. PALMER, *Auditor.*

April 14, 1866.

Statement of rolling stock purchased and built by the Milwaukee and St. Paul R'y Co. from July 31, 1865, to January 9, 1866.

| | | | |
|---|---|---|---|
| 9 locomotives, *a* | $20,264 88 | | $182,383 98 |
| 2 passenger cars, | 5,500 00 | | 11,000 00 |
| 90 box cars, | 1,060 00 | | 95,400 00 |
| 4 flat cars, | 750 00 | | 5,000 00 |
| | | | 291,783 98 |

E. and O. E.—Milwaukee, April 14, 1866.

657 *Exhibit No.* 8.

H. L. PALMER, *Auditor.*

April 14, 1866.

Statement of mileage rolling stock July 31, 1865, to January 9, 1866.

| | Milw. and St. P. r'y. | East. div'n |
|---|---|---|
| Locomotives | 517,505 | 86,255 |
| Passenger cars | 488,070 | 51,430 |
| Baggage cars | 124,224 | 25,230 |
| Mail and express cars | 100,120 | 23,095 |
| Freight cars | 4,493,842 | 734,841 |

Milwaukee, Wis., April 13th, 1866.

658 United States circuit court for the district of Wisconsin.

CLERK'S OFFICE, MILWAUKEE, *January 3d*, 1866.

I hereby certify that on the 30th day of December, A. D. 1865, the Milwaukee and Minnesota Railroad Company paid to me the sum of four hundred and sixty-one thousand eight hundred and eighty-three dollars and thirteen cents, the amount due, principal and interest, on the decree of Sept. 28th, 1865, in the case of James T. Soutter, survivor, *vs.* The La Crosse and Milwaukee Railroad Company and others, which amount is deposited with Messrs. Marshall & Ilsley, to the credit of said circuit court.

And also paid the sum of five thousand five hundred and forty-eight dollars and twenty-three cents, the taxed costs in said cause.

In testimony whereof I have hereunto set my hand and official seal this 3d day of January, A. D. 1866.

[SEAL.] A. SCOTT SLOAN, *Clerk.*

[5-cent revenue stamp, cancelled.]

Indorsed: Filed January 4, 1866.

The Milwaukee and Minnesota Railroad Company further read in evidence the bonds given by it under the order of July 18, 1865, approved by the clerk, as follows, to wit:

659 Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c., trustee, complainant,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company, the Milwaukee and Minnesota Railroad Company, and others.

Know all men by these presents, that the Milwaukee and Minnesota Railroad Company, as principal, and William R. Griffith, Albert C. Gunnison and Alex. Fleming, sureties, acknowledge themselves to be held and firmly bound unto the United States of America in the penal sum of twenty-five thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made, said company and said sureties hereby bind themselves, their successors, heirs, representatives, and assigns firmly by these presents.

Dated, signed, sealed, and delivered, this 29th day of December, A. D. 1865.

Provided, however, and this bond is upon the condition following, that is to say, that if the said Milwaukee and Minnesota Railroad Company shall well and truly pay to Sebra Howard and Selah
660 Chamberlain, or to the owner or owners of certain judgments heretofore recovered in the district court of the United States for the district of Wisconsin, or in any other court whatever, in favor of said Howard and said Chamberlain, or either of them, or both of them, against the La Crosse and Milwaukee Railroad Company, all such sums of money as may come into the hands of said Milwaukee and Minnesota Railroad Company, which shall hereafter be found to be rightly applicable to the payment of their claims, or the claims of either of them, if they shall be established as liens upon the railroad owned by the Milwaukee and Minnesota Railroad Company, being the railroad from Milwaukee to Portage, in the State of Wisconsin, according to the true intent and meaning of the order of this court, made in this cause in this behalf on the 18th day of July, A. D. 1865, then this bond to be void; otherwise in full force and virtue.

Dated, signed, sealed and delivered the day and year first above written.

The Milwaukee & Minnesota R. R. Co.,
[SEAL.] By A. C. GUNNISON, *President.*
[SEAL.] WM. R. GRIFFITH.
[SEAL.] A. FLEMING.
[SEAL.] A. C. GUNNISON.

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

William R. Griffith, Albert C. Gunnison, and Alexander Fleming, being duly sworn on oath, says, each for himself, that he is worth the sum of fifty thousand dollars over and above all liabilities and exemptions of property from sale on executions.

WM. R. GRIFFITH.
A. FLEMING.
A. C. GUNNISON.

Subscribed and sworn to before me, this second day of January, A. D. 1866, as witness the seal.

(Signed) JOHN A. OSBORN, [L. S.]
*U. S. Commissioner, Southern District of New York.*

[5-cent R. S. canc'd.]

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of John A. Osborn, whose name is subscribed to the annexed jurat to bond, and that the signature to the same is in his proper handwriting. And I do further certify, that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed by name and affixed the seal of the said circuit court, this second day of January, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[L. S.] KENNETH WHITE, *Clerk.*

[5-cent R. S. canc'd.]

DISTRICT OF WISCONSIN, *ss:*

I hereby approve this bond and the sureties thereto, this 9th day of January, A. D. 1866.

A. SCOTT SLOAN,
*Clerk U. S. Circuit Court, Dist. Wis.*

661 Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c., complainant,
*vs.*
THE LA CROSSE & MILWAUKEE Railroad Company, the Milwaukee & Minnesota Railroad Company, and others. } In equity.

Know all men by these presents, that the Milwaukee & Minnesota

Railroad Company, as principal, and William R. Griffith, Albert C. Gunnison, and Alexander Fleming, as sureties, are held and firmly bound unto Hans Crocker, receiver in the above-entitled cause, in the penal sum of twenty thousand dollars, for the payment of which, well and truly to be made, the said company and said sureties hereby bind themselves, their successors, heirs, and representatives, firmly these presents.

Signed, sealed, and delivered this 29th day of December, A. D. 1865.

Provided, however, this bond is given upon the express condition that if said Milwaukee & Minnesota Railroad Company shall well and truly, fully, and entirely indemnify the said Hans Crocker from and against all contingent liability mentioned in the report of H. L. Palmer, esq., auditor of this cause, and from all costs, expenses, and trouble in any and every way arising or resulting therefrom, then this bond shall be null and void, otherwise of full force, virtue, and effect.

Signed, sealed, and delivered the day and year above written.

The Milwaukee & Minnesota R. R. Co.,

[L. S.] By A. C. GUNNISON, *President*.
[L. S.] WM. R. GRIFFITH.
[L. S.] A. FLEMING.
[L. S.] A. C. GUNNISON.

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

William R. Griffith, Albert C. Gunnison, and Alexander Fleming, being duly sworn, on oath says, (each for himself,) that he is worth the sum of forty thousand dollars over and above all liabilities and exemptions of property for sale on execution.

WM. R. GRIFFITH.
A. FLEMING.
A. C. GUNNISON.

Subscribed and sworn before me, this second day of January, A. D. 1866, as witness the seal.

[L. S.] JOHN A. OSBORN,
*U. S. Commissioner for the Southern Dist. of N. Y.*

[5 ct. R. S., canc'd.]

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of John A. Osborn, whose name is subscribed to the
662 annexed jurat to bond, and that the signature to the same is in his proper handwriting; and I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, this second day of January, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[L. S.] KENNETH G. WHITE, *Clerk.*

[5-ct. R. S., canc'd.]

DISTRICT OF WISCONSIN, *ss:*

I hereby approve this bond, this 9th day of January, A. D. 1866, and the sureties thereto.

A. SCOTT SLOAN,
*Clerk U. S. Circuit Court, Dist. of Wis.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States for the district of Wisconsin, hereby certify that the above and foregoing are true copies of an order made by said court on the day and in the cause on which it purports to have been made, and of two bonds filed this day by the Milwaukee & Minnesota Railroad Company in my office, and duly approved by me this day.

I further certify that the Milwaukee & Minnesota Railroad Company has paid to me, in lawful money of the United States, the full amount, together with all interest, cost, and expenses, as provided by said order, to entitle that company to the possession of the railroad, rolling stock, and other things mentioned in said order in that behalf.

In testimony whereof I have hereunto set my hand and duly affixed the seal of said court, at Milwaukee, this 26th day of January, A. D. 1866, and of the independence of the United States the ninetieth.

[SEAL.] A. SCOTT SLOAN, *Clerk.*
By JAMES McFARLIN, *Deputy.*

[5-ct. R. S., canc'd.]

663 Circuit court of the United States, district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD Company *et al.* } In equity.

APRIL 16, 1866.

This day the report of H. L. Palmer, auditor in this cause, filed and made August 30, 1865, and the exceptions thereto, and the report of said auditor this day made and filed, and the exceptions thereto, were considered by the court; and thereupon it is ordered by the court now here—

1. That the said report of said auditor, filed August 30, 1865, be,

and the same hereby is, confirmed, and all exceptions thereto be, and hereby are, overruled.

2. Ordered further, that the Milwaukee & St. Paul Railway Company pay, within ten days from this day, into this court, to be applied on the interest maturing on mortgages, which are a lien on the eastern division of the La Crosse & Milwaukee railroad, in the order of their priority, the sum of thirty-three thousand and ninety-four dollars and fifty-one cents, ($33,094 51,) found and reported as due from said Milwaukee & St. Paul Railway Company for use of rolling stock by said report, filed August 30, 1865; and the sum of forty-eight thousand eleven dollars and 57 cents, being the amount reported by said auditor this day as due by the said Milwaukee & St. Paul Railway Company for use of rolling stock up to January 9, 1866, ($48,011 57,) being in all the sum of eighty-one thousand one hundred and six dollars and eight cents, ($81,106 08,) and that said reports and exceptions be reserved for further hearing on other points involved therein.

664 The Milwaukee & Minnesota Railroad Company further read in evidence the papers upon which it moved for attachment against St. Paul Company in eastern division case, as follows:

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, begun and held according to law, on the second Monday of April, A. D. 1865, at the city of Milwaukee, in said district of Wisconsin, present and presiding Hon. Samuel F. Miller, associate justice of the Supreme Court of the United States, assigned to the said circuit, and the Hon. Andrew G. Miller, district judge.

On the twentieth day of the term, to wit, on the eighteenth day of July, A. D. 1865, the following proceedings were had, to wit:

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD Company and others.

On motion of Matt. H. Carpenter, solicitor of the Milwaukee & Minnesota Railroad Company, one of the defendants in this cause, and on the mandate of the Supreme Court of the United States in this cause—

Ordered that the whole amount due the complainants in this cause, and to become due before the day of sale of the mortgaged premises, are estimated, as now appears, to be as follows, viz:

Amount fixed by order of decree nisi, $405,290 05, together with interest thereon since September 27, 1864. Coupons due March 1, 1865, $40,000, with interest thereon since that date. Coupons to become due September 1, 1865, $40,000, with interest thereon from

that date. Expenses, counsel fee, etc., allowed at $35,796 33, with interest thereon from this day.

665 Ordered further, that in case said Milwaukee and Minnesota Railroad Company shall, before a sale of the mortgaged premises in this cause, pay to the clerk of this court for the complainant in this cause the several sums above mentioned, with interest thereon as aforesaid to the day of such payment, and the costs in this cause to be taxed; that upon such payment the said receiver, Hans Crocker, and the said Milwaukee & St. Paul Railway Company, its officers, directors, agents, and employees, deliver over to said Milwaukee & Minnesota Railroad Company the eastern division, so called, of the La Crosse and Milwaukee railroad, so called, from Milwaukee to Portage, together with all the rolling stock that was on the whole of the La Crosse and Milwaukee railroad, or belonged or appertained thereto when the said receiver was appointed, except forty box cars, numbered as follows, viz: 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, and also deliver to said Milwaukee & Minnesota Railroad Company such proportion of the rolling stock that was purchased by the receiver as 121,178 dollars bears to 26,199 dollars, together with all the rights, privileges, and franchises, and personal and other property belonging or in any wise appertaining to said railroad from Milwaukee to Portage, and that the said receiver be thereafter dismissed and discharged, except for the purpose of passing his accounts.

Ordered further, that before the Milwaukee & Minnesota Railroad Company shall be allowed and permitted to enter into possession as aforesaid it shall make, execute, and file with the clerk of this court a bond to the United States in the penal sum of twenty-five thousand dollars, with sufficient surety, to pay to Sebra Howard and Selah Chamberlain, or the owners of said judgments, or either of them, all such sums as may come into the hands of said company, which shall hereafter be found to be rightly applicable to the payment of their

666 claims, if they shall be established as liens upon said road. And that said company execute its bond to Hans Crocker, in the sum of twenty thousand dollars, with sufficient surety, to indemnify him for contingent liability mentioned in the report of the auditor in this cause. Ordered further, that said Howard or Chamberlain may, at any time hereafter, apply to the court for an additional bond, if the circumstances of the case shall require it, both of said bonds hereinbefore mentioned, to be approved by the clerk of this court. Ordered further, that if the said Milwaukee & St. Paul Railway Company shall pay over the sum in its hands, or any part thereof, as this day ordered, the said Milwaukee and Minnesota Railroad Company shall only be required to pay to the clerk of this court the balance of the amount so due said complainant at the date of payment by said last-named company over such sums so paid by said Milwaukee & St. Paul Railway Company, and said Milwaukee & Minnesota Railroad Company shall be entitled to possession as hereinbefore men-

tioned, upon payment of such balance, and giving bonds as hereinbefore ordered.

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD Company, the Milwaukee & Minnesota Railroad Company, and others.

Know all men by these presents, that the Milwaukee and Minnesota Railroad Company, as principal, and William R. Griffith, Albert C. Gunnison, and Alexander Fleming, sureties, acknowledge themselves to be held and firmly bound unto the United States of
667 America, in the penal sum of twenty-five thousand dollars lawful money of the United States, for the payment of which, well and truly to be made, said company and said sureties hereby bind themselves, their successors, heirs, representatives, and assigns, firmly by these presents.

Dated, signed, sealed, and delivered this 29th day of December, A. D. 1865.

Provided, however, and this bond is upon the condition following, that is to say: That if the said Milwaukee and Minnesota Railroad Company shall well and truly pay to Sebre Howard and Selah Chamberlain, or to the owner or owners of certain judgments heretofore recovered in the district court of the United States for the district of Wisconsin, or in any other court whatever, in favor of said Howard and said Chamberlain, or either of them, or both of them, against the La Crosse & Milwaukee Railroad Company all such sums of money as may come into the hands of said Milwaukee and Minnesota Railroad Company, which shall hereafter be found to be rightly applicable to the payment of their claims, or the claim of either of them, if they shall be established as liens upon the railroad owned by the Milwaukee and Minnesota Railroad Company, being the railroad from Milwaukee to Portage, in the State of Wisconsin, according to the true intent and meaning of the order of this court, made in this cause in this behalf, on the 18th day of July, A. D. 1865, then this bond to be void, otherwise in full force and virtue.

Dated, signed, sealed, and delivered the day and year first above written.

The Milwaukee and Minnesota R. R. Co.
[L. S.] By A. C. GUNNISON, *President.*
[L. S.] WM. R. GRIFFITH.
[L. S.] A. FLEMING.
[L. L.] A. C. GUNNISON.

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

William R. Griffith, Albert C. Gunnison, and Alexander
668 Fleming, being duly sworn, on oath says, each for himself, that he is worth the sum of fifty thousand dollars over and above all liabilities and exemptions of property from sale on executions.

WM. R. GRIFFITH.
A. FLEMING.
A. C. GUNNISON.

Subscribed and sworn to before me this second day of January, A. D. 1866, as witness the seal.

(Signed) JOHN A. OSBORN, [L. S.]
*U. S. Comm'r Southern District of New York.*

[5 ct. r. s., cancl'd.]

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of John A. Osborn, whose name is subscribed to the annexed jurat to bond, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, this second day of January, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[L. S.] KENNETH G. WHITE, *Clerk.*

[5-ct. r. s., canc'd.]

DISTRICT OF WISCONSIN, *ss:*

I hereby approve this bond and the sureties thereto, this 9th day of January, A. D. 1866.

A. SCOTT SLOAN,
*Clerk U. S. Circuit Court, Dist. Wis.*

669 Circuit court of the United States for the district of Wisconsin, in equity:

JAMES T. SOUTTER, survivor, &c., complainant,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD Company, the Milwaukee and Minnesota Railroad Company, and others.

Know all men by these presents, that the Milwaukee & Minnesota Railroad Company, as principal, and William R. Griffith, Albert C. Gunnison, and Alexander Fleming as sureties, are held and firmly

bound unto Hans Crocker, receiver in the above-entitled cause, in the penal sum of twenty thousand dollars, for the payment of which, well and truly to be made, the said company and said sureties hereby bind themselves, their successors, heirs, and representatives, firmly by these presents.

Signed, sealed, and delivered this 29th day of December, A. D. 1865.

Provided, however, this bond is given upon the express condition that if said Milwaukee & Minnesota Railroad Company shall well and truly, fully and entirely, indemnify the said Hans Crocker from and against all contingent liability mentioned in the report of H. L. Palmer, esq., auditor in this cause, and from all cost, expenses, and trouble in any and every way arising or resulting therefrom, then this bond shall be null and void, otherwise of full force, virtue, and effect.

Signed, sealed, and delivered the day and year above written.

The Milwaukee & Minnesota R. R. Co.

[L. S.] By A. C. GUNNISON, *President.*

[L. S.] WM. R. GRIFFITH.
[L. S.] A. FLEMING.
[L. S.] A. C. GUNNISON.

670 UNITED STATES OF AMERICA, *Southern District of New York*, ss:

William R. Griffith, Albert C. Gunnison, and Alexander Fleming, being duly sworn, on oath says, each for himself, that he is worth the sum of forty thousand dollars over and above all liabilities and exemptions of property for sale on execution.

WM. R. GRIFFITH.
A. FLEMING.
A. C. GUNNISON.

Subscribed and sworn before me, this second day of January, A. D. 1866, as witness the seal.

[L. S.] JOHN A. OSBORN,
*U. S. Comm'r for the Southern district of N. Y.*

[5-ct. r. s., canc'd.]

UNITED STATES OF AMERICA, *Southern District of New York*, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of John A. Osborn, whose name is subscribed to the annexed jurat to bond, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, this second day of January,

in the year of Our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[L. S.] KENNETH G. WHITE, *Clerk.*

[5-ct. r. s., canc'd ]

671 DISTRICT OF WISCONSIN, *ss:*

I hereby approve this bond, this 9th day of January, A. D. 1866, and the sureties thereto.

A. SCOTT SLOAN,
*Clerk U. S. Circuit Court, Dist. of Wis.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States for the district of Wisconsin, hereby certify that the above and foregoing are true copies of an order made by said court, on the day and in the cause on which it purports to have been made, and of two bonds filed this day by the Milwaukee & Minnesota Railroad Company in my office, and duly approved by me this day.

I further certify that the Milwaukee & Minnesota Railroad Company has paid to me, in lawful money of the United States, the full amount, together with all interest, costs, and expenses, as provided by said order, to entitle that company to the possession of the railroad, rolling stock, and other things mentioned in said order in that behalf.

In testimony whereof I have hereunto set my hand and duly affixed the seal of said court at Milwaukee, this 6th day of January, A. D. 1866, and of the independence of the United States the ninetieth.

[SEAL.] A. SCOTT SLOAN, *Clerk.*
By JAMES McFARLIN,
*Deputy.*

5-cent revenue stamp, cancelled.

672 OFFICE OF THE RECEIVER OF THE LA CROSSE AND MILWAUKEE R. R. CO.,
*Milwaukee, Jan. 19th,* 1866.

To whom it may concern:

I have this day, by order of the circuit court of the United States, for the district of Wisconsin, delivered possession of the so-called eastern division of this road to the Milwaukee and Minnesota Railroad Company.

All operating expenses, since the 9th inst., will be paid by said company.

H. CROCKER, *Receiver, &c.*

At a meeting of the directors of the Milwaukee and Minnesota Railroad Company held December 30th, 1865:

On motion of Thomas A. Scott, it was—

*Resolved*, That Alexander Fleming, vice president of this company, be authorized and empowered in the name of this company to demand

and receive from Hans Crocker, receiver of the circuit court of the United States for the district of Wisconsin, in equity, in certain causes therein pending, and from the Milwaukee and St. Paul Railway Company, possession of the railroad and rolling stock, and all other things belonging to the Milwaukee and Minnesota Railroad Company.

I certify *that* that the foregoing is a true copy from the minutes of the company.

[SEAL.] HENRY M. ALEXANDER,
*President.*

673 Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company, the Milwaukee and Minnesota Railroad Company, and others.

To the Milwaukee and St. Paul Railway Company, its officers, directors, agents, and employees, and each and every one of them, and to Alexander Mitchell, president of said company, N. A. Cowdrey, Horace Galpin, David M. Hughes, William Gould, Frederic P. James, George Smith, Asahel Finch, jr., William H. White, Russell Sage, George W. Rogers, Selah Chamberlain, S. S. Merrill, John W. Cary, Walter S. Gurnee, Washington Hunt, ——— Wesley, Daniel Wells, jr., A. Reasoner, Alanson Cary, secretary of said company, S. W. Crippen, Frank Lyman, Westley Todd, O. F. Willis, W. L. Mead, S. M. Green, Charles Philipps, James Kindling, Uriah Reynolds, Scott Dimick, Henry More, D. W. Heading, C. Renous, D. Willey, E. Crippen, James Little, sr., H. Sage, S. Ellis, M. Coffin, S. Anderson, L. M. Follett, F. Toucey, A. Peck, J. Morrison, S. Sleeper, W. F. Fuller, M. Farrar, O. Huchinson, Ham Grace, John Hodges, J. Patter, E. Wagner, R. Grace, P. Blackwell, H. E. Emerson, F. V. Finch, W. E. Kittredge, Geo. Huntington, L. B. Abbott, P. Lyons, T. B. Livingston, H. C. Robinson, C. A. Brickell, C. W. Snow, R. Laferty, A. Wagerner, Wm. Bloomfield, Frank Keiting, J. Johnson, Wm. Caton, O. Warriner, Geo. Thompson, P. Plumb, C. E. Page, J. Sargent, M. Kelley, G. Gould, E. Fox, W. McCurdy, C. Williams, O. Blanchard, C. J. Hoxey, C. Eales, J. McSorley, P. Melaney, Wm. McIntosh, Wm. Ferguson, Geo. Howard, A. Jones, A. Downer, J. Donahugh, R. Tupper, J. Ryan, E. Colton, J. Little, C. Hardier, Sam. Reed, Jas. Little, jr., J. Jones, J. Williams, J. Moran, F. V. Finch, jr., Aug. Ruch, P. McSorley, J. Norris, C. C. Chad-
674 wick, P. New, C. Magatt, E. Colton, Wm. Brown, Thomas Donahugh, Patrick Grace, J. Brooks, A. Fischback, George Wells, J. Mackey, A. C. Kenniston, ——— Hall, William Cosegrove, D. M. Christy:

Please take notice that the papers herewith served are certified copies of a certain order of said court in the above-entitled cause;

and copies of the two bonds, duly approved by the clerk of said court, which have been filed in the office of said clerk in this cause by the Milwaukee and Minnesota Railroad Company, and in pursuance of and in compliance with said order; and also a copy of a paper executed by Hans Crocker, esq., receiver of said court; and also a copy of a resolution of the board of directors of the Milwaukee and Minnesota Railroad Company, empowering Alexander Fleming, vice president of said company, to receive the property mentioned in said order.

You will further take notice that the said Milwaukee and Minnesota Railroad Company now and hereby demands that you deliver to the said Fleming possession of any and all of the rolling stock and other property mentioned in said order, now in your possession or under your control, or in the possession or under the control of each, any, and every one of you, according to the exigency, direction, and command of said order.

You and each of you will further take notice that for any failure on your part, or on the part of any one or more of you to comply with the terms of said order and this demand, you, and each and
675 every one of you, will be proceeded against for contempt of said court; and that each and every one of you will be held liable severally and individually for the value of any property in your hands, and for damages for detaining the same and otherwise.

Dated February 10, 1866.

The Milwaukee and Minnesota R. R. Co.,
By ALEXANDER FLEMING,
*Vice President.*
MATT. H. CARPENTER,
*Solicitor.*

676 *Correspondence between the Milwaukee and Minnesota Railroad Co. and the Milwaukee and St. Paul Railway Co., as to the refusal of the latter company to deliver possession of rolling stock under order of the United States circuit court.*

OFFICE OF THE MILWAUKEE AND ST. PAUL RAILWAY CO.,
*Milwaukee, January 29th,* 1866.

To the Milwaukee and Minnesota Railroad Company:

Your printed demand upon this company for the delivery to A. Fleming of all the rolling stock mentioned in the order of July 18th, 1865, entered in the case of James T. Soutter, survivor *vs.* La Crosse and Milwaukee Railroad Company and others, in the circuit court of the United States for the district of Wisconsin, is this day received.

The rolling stock mentioned in said order purchased by the Receiver, consisting of eight (8) locomotives, two (2) passenger cars, one (1) baggage car, six (6) caboose cars, and one hundred and thirty-four (134) house freight cars, has never been divided, but since the first day of May, 1864, has been in the joint possession of the receiver and of this company, and is owned jointly by this company and the eastern division of said La Crosse and Milwaukee railroad.

677 The order of July 18th, 1865, requires the receiver to deliver a certain undivided proportion of said rolling stock to you, but provides no way or means of making a division, or specifying the particular locomotives or cars to be delivered.

A portion of this stock has already been delivered to you by the receiver, to wit: three (3) locomotives and a large number of cars. One of the locomotives is now at Portage subject to the order of the receiver, and the remaining four (4) are in our shops at Watertown undergoing repairs; two of them will be at Portage this week under the control of the receiver, and the cars on our line are being collected as rapidly as possible at Portage, so that the proportion belonging to the eastern division may be delivered by the receiver.

In order to enable the receiver to deliver to you in severalty the proportion of said rolling stock belonging to the eastern division, we have proposed to him a division thereof subject to future review and correction by the court, or by the agreement of parties interested: and are ready to co-operate with him in making a fair and equitable division thereof.

We claim no interest in or control over the proportion of rolling stock purchased by the receiver belonging to the eastern division, and will unite with the receiver in making a division of the stock so purchased and furnish him every facility in our power, when divided, to make an immediate delivery thereof to you.

The rolling stock which was on the road June 11th, 1860, of which the receiver took possession, was, by the order of the district court made on the 12th day of June, 1863, in the land grant foreclosure suit, taken from the receiver and delivered to this company as purchaser thereof under the land grant decree, and the receiver was, as to said property, discharged; since which time this company has been in the exclusive possession thereof. The title of this stock is now in litigation between this company and you, which litigation is not yet determined. No order has been entered therein disturbing our possession. Whenever the court shall have disposed of the questions there raised, and settled the title and ownership of said stock, we shall cheerfully conform to its decision.

In the mean time we would avoid so far as possible any inconvenience to the public or injury to you arising therefrom; we shall
678 therefore furnish to you of said stock sufficient to enable you, with your proportion of that purchased by the receiver, to operate your road.

To that end we have already delivered to you, as of our own property, nine (9) of said locomotives, together with passenger, mail, baggage, and freight cars, which are now in your possession; and should the stock already furnished you by us, together with the proportion of that purchased by the receiver belonging to you, prove insufficient to operate your road, we will furnish, in addition of said original stock an ample and more than sufficient quantity for that purpose; and in case of a difference of opinion on the subject, we will submit to the decision of any suitable and impartial umpire you may name.

Further than this we do not propose to deliver to you any part or

portion of said rolling stock so on said road on the 11th day of June, 1860, but claim the same as of right and legally and properly in our possession and under our control, and we are advised that the course above indicated is practically a full and complete compliance with said order of July 18th, 1865, so far as the same is obligatory or binding upon us.

Respectfully yours,

S. S. MERRILL,
*General Manager.*

MILWAUKEE, *January 31st*, 1866.

To the Milwaukee and St. Paul Railway Company, its officers, directors, agents and employees, and each and every one of them, and to Alexander Mitchel, President of said company, N. A. Cowdrey, Horace Galpin, David M. Hughes, William Gould, Frederic P. James, George Smith, Asahel Finch, jr., William H. White, Russell Sage, George W. Rodgers, Selah Chamberlain, S. S. Merrill, John W. Cary, Walter S. Gurnee, Washington Hunt, ——— Wesley, Daniel Wells, jr., A. Reasoner, Alanson Cary, secretary of said company, J. W. Crippen, Frank Lyman, Westley Todd, O. F. Willis, W. L. Mead, S. M. Green, Charles Philipps, James Kindling, C. Renous, D. Willey, E. Crippen, James Little, jr., H. Sage, J. Ellis, M. Coffin, J. Anderson, A. Peck, S. Sleeper, M. Farrar, O. Huchinson, Ham Grace, John Hodges, J. Patter, E. Wagner, R. Grace, P. Blackwell, H. E. Emerson, F. V. Finch, W. E. Kittredge, Geo. Huntington, L. B. Abbott, P. Lyons, T. B. Livingston, H. C. Robinson, C. A. Brickell, C. W. Snow, R. Laferty, A. Wagerner, Wm. Bloomfield, Frank Keiting, J. Johnson, Wm. Caton, O. Warriner, Geo. Thompson, P. Plumb, C. P. Page, J. Sargeant, M. Kelley, G. Gould, E. Fox, W. McCurday, C. Williams, O. Blanchard, C. J. Hoxey, C. Eales, J. McSorley, P. Melaney, Wm. McIntosh, Wm. Ferguson, Geo. Howard, A. Jones, A. Downer, J. Donahugh, R. Tupper, J. Ryan, E. Colton, J. Little, C. Hardier, Sam. Reed, Jas. Little, jr., J. Jones, J. Williams, J. Moran, F. V. Finch, jr., Aug. Ruch, P. McSorley, J. Norris, C. C. Chadwick, P. New, C. Magatt, E. Colton, Wm. Brown, Thomas Donahugh, Patrick Grace, J. Brooks, A. Fishback, George Wells, J. Mackey, A. C. Kenniston, ——— Hall, D. M. Christy, W. P. Cosgrave:

GENTLEMEN:—In reply to the demand heretofore made on you by the Milwaukee and Minnesota Railroad Company, that you, and, each and every of you, comply with a certain order of court therein named, the Milwaukee and Minnesota Railroad Company has just received a letter from S. S. Merrill, manager of the Milwaukee and St. Paul Company, of which the foregoing is a copy.

As to the rolling stock purchased by the receiver, this company has requested the receiver to proceed at once and deliver to this company such proportion thereof as it is entitled to under the order of the court, and will attend said receiver at any time and place to be named by him to receive the same.

As to the rolling stock on the La Crosse and Milwaukee railroad when the receiver was appointed, except the forty box cars, the letter of your manager just received informs this company you do not intend to deliver it.

It is not supposed that your counsel need any instruction upon this subject, nor is it expected that this letter will produce any practical result, if you are disposed to resist the authority of the court. But being instructed by the Minnesota Company to take the proper steps to hold the officers, directors and agents of the St. Paul company liable personally for the consequences of this contempt of the court; and as many of those officers are gentlemen with whom I have always been on friendly relations socially, I have resolved to lay before them the facts in the case as they appear of record; and then if they choose to disobey the order of the court, the consequences will be upon them.

The eastern division of the road was first mortgaged, and the mortgage conveyed the road from Milwaukee to Portage, together with the rolling stock and franchises pertaining thereto between the limits aforesaid; but did not specify the amount of rolling stock intended to be conveyed by the mortgage.

The western division was mortgaged in the same way.

Subsequently the whole road, and all its rolling stock, property, and franchises were mortgaged to Barnes, and on the foreclosure of that mortgage in May, 1859, passed to the Milwaukee and Minnesota company. This has been so decided by the Supreme Court of the United States.—(2 Wallace, 304.) Thereby the Minnesota company became the successor of the old La Crosse company, and the owner of the road, property, and franchises subject to prior legal liens.

Subsequently a suit was commenced in the United States court to foreclose the western division mortgage, and another was afterwards commenced in same court to foreclose a mortgage on the western division. As each of these suits was distinct from the other, and each was commenced to foreclose a particular mortgage, one of which mortgages covered the eastern division with its rolling stock, and the other the western division with its rolling stock, and as neither mortgage specified how much of the whole rolling stock was covered by it, of course it was necessary for the court to ascertain this by proceedings to that end.

For that purpose the court made an order of reference in each of these cases, among other things as follows:

WESTERN DIV. CAUSE.

"And it is further ordered that the said masters ascertain and report the whole amount of rolling stock on the road, and that they specify the quantity thereof that is covered by and included in this mortgage, and also in the first and second mortgages respectively."

EASTERN DIV. CAUSE.

"And it is further ordered by the court that the said masters ascertain and report the whole amount of rolling stock on the whole

road, and that they specify the quantity thereof that is covered by and included in the first mortgage, and also in this mortgage and the mortgage of Greene C. Bronson, James T. Soutter, and Shepherd Knapp."

The masters made their report as follows:

WESTERN DIV. CAUSE.

"We have also ascertained the whole amount of rolling stock on the whole road at the cost price. The amount thereof was, at the date of the filing of the bill of complaint in this cause, five hundred and sixty-nine thousand six hundred and thirty-five dollars and seventy-eight cents, and an additional amount of fifty-three thousand six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount to $623,235 78.

"And we have ascertained, and do further report, that of the said rolling stock, forty box cars, amounting at the cost price thereof, to to thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, are covered by and included in the mortgage executed to the complainants as set forth in the bill of complaint in this cause, the said cars having been purchased by the proceeds of a portion of the bonds to which this mortgage is collateral, and all the remainder of the said rolling stock is covered by and included in the first mortgage upon the said railroad, and in the mortgage upon the said railroad executed to Greene C. Bronson and James T. Soutter, and bearing date on the seventeenth day of August, A.D. 1857."—Record, 72.

EASTERN DIV. CAUSE.

"We have also ascertained the whole amount of rolling
679 stock on the whole road. The amount thereof, at the cost price, was, at the date of filing the bill of complaint in this cause, five hundred sixty-nine thousand six hundred and thirty-five dollars and seventy-eight cents. And an additional amount of fifty-three thousand six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount now on the road, six hundred twenty-three thousand two hundred thirty-five dollars and seventy-eight cents, ($623,235 78.)

"And we have ascertained, and do further report, that of the said rolling stock, forty box cars, amounting, at the cost price thereof, to thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, ($31,979 64,) and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, are covered by and included in the mortgage of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, and no other. And all the remainder of the said rolling stock

is covered by and included in the first mortgage upon the said railroad, and in the complainants' mortgage specified in the bill of complaint."—Record, 90.

This report, which gave to the western division but forty box cars, was excepted to by Mr. Carey for the complainants in that cause, upon the ground that it ought to have given all; and was excepted to by Mr. Jas. S. Brown, in the eastern division cause, because it ought not to have given the western division any of the rolling stock, not even the forty box cars. But the court overruled all these exceptions and made its decree in the western division cause for the sale of that division and said forty cars.

The complainants in the western division cause proceeded to execute the decree by a sale, and the Milwaukee and St. Paul company claims to have become the purchaser of what was sold at that sale. This is the title and the only title of that company to any part of the road or franchises of the old La Crosse company.

680 The premises of the eastern division mortgage, viz: the road from Milwaukee to Portage, and all the rolling stock, except the forty box cars, was, of course, in no way affected by the sale of the western division and the forty cars.

At the July session, 1865, of the United States court, an order was made on a mandate from the Supreme Court of the United States, among other things, as follows:

"On motion of Matt. H. Carpenter, solicitor of the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause. And on the mandate of the Supreme Court of the United States in this cause.

"Ordered that the whole amount due the complainants in this cause, and to become due before the day of sale of the mortgaged premises, are estimated as now appears to be as follows, viz:

"Amount fixed by order of decree nisi, $405,290 05, together with interest thereon since September 27, 1864. Coupons due March 1, 1865, $40,000, with interest thereon since that date. Coupons to become due September 1, 1865, $40,000, with interest thereon from that date. Expenses, counsel fee, etc., allowed at $35,796 33, with interest thereon from this day.

"Ordered further, that in case said Milwaukee and Minnesota Railroad Company shall, before a sale of the mortgaged premises in this cause, pay to the clerk of this court for the complainant in this cause the several sums above mentioned, with interest thereon as aforesaid, to the day of such payment and the costs in this cause to be taxed, that upon such payment the said receiver, Hans Crocker, and the said Milwaukee and St. Paul Railway Company, its officers, directors, agents, and employees, deliver over to said Milwaukee and Minnesota Railroad Company the eastern division, so called, of the La Crosse and Milwaukee railroad, so called, from Milwaukee to Portage, together with all the rolling stock that was on the whole of the La Crosse and Milwaukee railroad, or belonged or appertained thereto when the said receiver was appointed, except forty box cars numbered as follows.

viz: 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, and also deliver to said Milwaukee and Minnesota Railroad Company such proportion of the rolling stock that was purchased by the receiver as 121,178 dollars bears to 26,199 dollars, together with all the rights, privileges, and franchises, and personal and other property belonging or in anywise appertaining to said railroad from Milwaukee to Portage, and that the said receiver be thereafter dismissed and discharged except for the purpose of passing his accounts."

This order has been fully complied with by the Minnesota company, nearly half a million of dollars have been paid into court, bonds have been filed, approved, and the Minnesota company thereupon
681 became entitled to possession under the order, and the receiver has actually surrendered the eastern division.

The Minnesota company thereupon served upon your company a certified copy of the order, the bonds filed, and a certificate of the clerk of the court that the order had been fully complied with and notice of the surrender of the eastern division by the receiver; and demanded of your company, and of its officers, directors, and agents, by name, a surrender of the rolling stock under the order of the court.

The letter before me is understood to be the refusal of your company to company to comply with that order.

The reason you assign, is that you claim to be the owner, not only of the forty box cars sold to you at the foreclosure sale, but also of the rolling stock which the court adjudged was not covered by your mortgage, and refused to sell to you; and you assert that the court delivered possession of this rolling stock to you as purchaser under the western division foreclosure sale.

To show you how unfounded is this claim, and how untrue is the basis upon which it rests, I ask your attention to the facts as they appear of record.

I have already shown you that for the purpose of ascertaining what rolling stock was covered by the land grant mortgage, in other words, belonged to the western division, the court made an order of reference, the masters reported only forty box cars, your counsel excepted to the report on that ground, and the court overruled the exception; and that the decree directed the sale of the forty box cars only. The order under which you obtained possession as purchaser was as follows:

"Whereupon it is ordered by the court (Mr. Carpenter in behalf of the Milwaukee and Minnesota Railroad Company, and Mr. Ryan in behalf of William Crawshay and Orville Oddie objecting) that the receiver deliver over to the said Milwaukee and St. Paul Railway Company the said railroad and appurtenances between Portage City and La Crosse, and the rolling stock and property specially described in the decree.

"And it is further ordered by the court that a full and perfect in-

ventory to be taken by the receiver of all the rolling stock other than the forty box cars specially mentioned in the decree; and of all personal property belonging to the said La Crosse and Milwaukee Railroad Company, including such as have been procured by the receiver and now on hand; and that he make report of the same on the eighth day of June next.

682 "And as in pursuance of the act incorporating the La Crosse and Milwaukee Railroad Company, a continuous road has been constructed and operated between La Crosse and Milwaukee, and the interest of the public requiring that the said road, as constructed and operated, shall continue to be so operated, it is ordered by the court, (reserving the right to rescind, change, or modify this order at any time hereafter,) that the said Milwaukee and St. Paul Railway Company and the receiver who continues to be the receiver of the eastern end or division of said La Crosse and Milwaukee railroad, between Milwaukee and Portage City, jointly operate said road between La Crosse and Milwaukee without interruption, and that the said Milwaukee and St. Paul Railway Company, and the said receiver, jointly, employ all the agents and persons necessary for the proper operating of said road; that the revenues of said road be paid to the receiver as heretofore, who shall keep all accounts and books for the inspection of the said company, and said company may keep duplicate books, and that all payments and disbursements for necessary expenses in operating said road shall be paid out of the joint fund, each division of said road to be entitled to its proportion of revenue and to be charged with its proportion of disbursements, and that the said receiver pay coupons of bonds on prior mortgages as heretofore."

You will see from reading this order, that, as purchaser, you obtained possession of only the rolling stock and property specially mentioned in the decree, that is, the forty box cars.

But for the purpose of keeping the road entire as it was chartered, the receiver and your company was authorized to operate the whole road, including the eastern division and all the rolling stock except the forty cars, jointly.

Afterwards, on the 12th June, the court, for the purpose of more completely securing the operation of the whole road, as an entire, continuous, road under the charter, made two orders as follows:

WESTERN DIVISION CAUSE.

"On consideration of the said petition of the Milwaukee and St. Paul Railway Company, and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee and St. Paul Railway Co. all and singular the railroad between the city of La Crosse and Portage City, its road bed and track, with its depots, station houses, engine houses, and all the other property belonging to said railroad between the said points; and the forty box cars mentioned and described in the decree.

"And also the share or proportion of the rolling stock and

683 property purchased by the receiver, as mentioned in the decree.

"And also, subject to other or previous liens or claims, the possession of the rolling stock on hand when the receiver took the same under the order of the court. And it is further ordered by the court, that the said receiver be, and hereby is, discharged as such from the management and control of the said western division of said railroad under the appointment in this case, subject, however, to the final settlement of his accounts, and subject to the orders made or to be made in this case and in the other cases in which he was appointed or may hereafter be appointed."

EASTERN DIVISION CAUSE.

After reciting the petition of the St. Paul Co., &c., &c.:

"It is thereupon ordered by the court that the order appointing a receiver in this case be modified in the manner following, subject to any further or other order rescinding, altering, or modifying this order now here made: That the receiver let the said Milwaukee and St. Paul Railway Co. into the possession of the eastern division of the La Crosse and Milwaukee railroad from Portage City to Milwaukee, with the appurtenances and property and rolling stock thereto belonging. And that the said Milwaukee and St. Paul Railway Co., subject to further order or orders of the said court, operate said eastern division of said railroad in connection with the said western division thereof, so that one continuous line of railroad between La Crosse and Milwaukee may be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Co., without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company, in pursuance of said charter, and not otherwise.

"And it is further ordered by the court that the said Milwaukee and St. Paul Railway Co. shall at all times allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Co., and of its board of directors, in relation to the business and operation of the whole line of road; and that the said railway company shall, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of the net revenues of the said railroad. And that the said receiver make monthly returns, as heretofore, of his accounts into court, and disburse the moneys by him received from time to time in the payment of liens and debts of the said La Crosse and Milwaukee Railroad Co., according to their priorities and equities.

"And it is further ordered by the court that before the said Milwaukee and St. Paul Railway Co. be permitted to have possession under this order, the said company, by its constituted officers, shall enter into bond to the United States, for the use and benefit of all interested, with sureties to be approved by the court, in the penalty of one hundred thousand dollars, conditioned that the said company will faithfully comply with this order of court this day made, and any subsequent orders relating to the operation and management
684 of the said railroad between La Crosse and Milwaukee, and will keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the La Crosse and Milwaukee Railroad Company, and shall make monthly returns, and pay over the net revenues of said road according to this order."

The order in the western division cause deserves particular attention. It orders the receiver:

(1.) To deliver to the St. Paul company full possession of the western division; "and the forty box cars mentioned and described in the decree."

(2.) To deliver also full possession of the "share or proportion of the rolling stock and personal property purchased by the receiver, as mentioned in the decree; thus terminating the joint occupancy with the receiver with which that possession had been burdened by the order of May 7.

So far the order is absolute, and shows by the repetition of the words at the end of each clause, "mentioned and described in the decree," that the court was delivering possession of what the St. Paul company had acquired title to by its purchase under the decree.

Then the order proceeds to direct the receiver to deliver also, subject however to all "other or previous liens or claims," the whole rolling stock on hand when he was appointed, that is, the remainder of the rolling stock except the forty box cars, which belonged to the eastern division, and of course was not mentioned and described in the land grant decree, therefore this clause is not followed, as the others were, by the words, "mentioned and described in the decree."

Considering the careful and guarded language of this order, it is impossible not to see that the court was drawing the distinction, in what it ordered to be delivered to the St. Paul company, between that which belonged to them by their purchase under the decree; that is the western division, the forty box cars, and the proportion of rolling stock purchased by the receiver; and that which was delivered to them temporarily, but not by virtue of their purchase under the decree.

The court in substance said—"take absolutely all that was purchased by you under the decree—the western division, forty
685 box cars, and the proportion of rolling stock purchased by the receiver; this you have purchased. The remainder of the said rolling stock has been ascertained to belong to the eastern division, and it must there remain; but we give it, with the eastern division, into your possession temporarily, that the whole may be operated together."

2. Turn now to the order in the eastern division cause. The court had decided that all the rolling stock, except forty box cars, was included in the eastern division first mortgage: that is, that it belonged to the railroad between the limits of Milwaukee and Portage; because such is the description in that mortgage. The court had determined for reasons of public policy, etc., set forth in the preamble to this order, to give to the St. Paul company the possession of the eastern division mortgage premises temporarily. This order gives to the St. Paul company the possession of the eastern division "and rolling stock thereto belonging," but subject nevertheless "to any further or other order, rescinding, altering, or modifying this order now here made."

How absurd to pretend that the court in this order regarded the rolling stock pertaining to the eastern division as having been purchased by the St. Paul company. Did a court ever yet put a purchaser into possession after the final decree and confirmation of sale, "subject to any further order rescinding" the same? This right reserved to the court to rescind the order giving the St. Paul company the eastern division "and the rolling stock belonging thereto," is conclusive that the court was granting to that company a favor and not a right; a temporary possession, not a title.

Under these orders, and as a condition to obtaining possession of the eastern division and its rolling stock, your company gave a bond, as follows, which will probably become matter of interest to its signers at no very distant day:

Know all men by these presents, that the Milwaukee and St. Paul Railway Company, as principal, and David M. Hughes, Alexander Mitchell, Russell Sage, Fred. P. James, N. A. Cowdrey, Horace Galpin, William H. White, George W. Rodgers, Selah Chamberlain, and Asahel Finch, as sureties, are held and firmly bound unto the United States of America, for the use and benefit of all interested herein, in the penal sum of one hundred thousand dollars, lawful money of the United States of America, to be paid to the said obligee,
its assigns, or any party interested herein, to which payment,
686 well and truly to be made to the said obligee, the said obligors
bind themselves, their heirs, executors, administrators, and assigns, firmly by these presents.

Sealed with our seals, and dated this twelfth day of June, in the year one thousand eight hundred and sixty-three.

The condition of this obligation is such, that whereas the district court of the United States for the district of Wisconsin, in a certain case therein pending, wherein Greene C. Bronson, James T. Soutter, and Shepherd Knapp are complainants, and the La Crosse and Milwaukee Railroad Company and others are defendants, made a certain order, bearing date on the twelfth day of June, A. D. 1863, directing the receiver to let the said Milwaukee and St. Paul Railway Company into possession of the eastern division of the La Crosse and Milwaukee railroad, between Portage City and Milwaukee, with its appurtenances, property, and rolling stock belonging thereto, and

directing said Milwaukee and St. Paul Railway Company, subject to the further order or orders of said district court, to operate said eastern division of said railroad in connection with the western division thereof, from Portage City to La Crosse, so that one continuous line of railroad between La Crosse and Milwaukee might be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Company without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company, in pursuance of said charter, and not otherwise.

And further directing that the said Milwaukee and St. Paul Railway Company shall, at all times, allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, daily access and examination of the records, books, and papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Company, and of its board of directors, in relation to the business and operations of the whole line of road, and that the said railway company should, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of net revenues of the said board.

Now, therefore, if the said Milwaukee and St. Paul Railway Company shall faithfully comply with said order of said court, and all subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and shall keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and
687 the creditors of the La Crosse and Milwaukee Railroad Com pany, and shall make monthly returns, and pay over the net revenues the said road according to said order, then this obligation to be null and void, otherwise to remain in full force and virtue.

The Milwaukee and St. Paul Company—by its president:

[SEAL.] D. M. HUGHES, *President.*
[SEAL.] D. M. HUGHES.
[SEAL.] AL'X MITCHELL.
[SEAL.] GEO. W. ROGERS.
[SEAL.] F. P. JAMES.
[SEAL.] N. A. COWDRY.
[SEAL.] RUSSELL SAGE.
[SEAL.] SELAH CHAMBERLAIN.
[SEAL.] HORACE GALPIN.
[SEAL.] W. H. WHITE.
[SEAL.] A. FINCH.

Signed, sealed, and delivered in presence of—
JOHN W. CARY.

RUSSELL SAGE, JR., *Secretary.*

JUNE 13, 1863.

This bond and the sureties approved by the court.

A. G. MILLER.

It was under these orders and this bond that you took possession of the rolling stock in question, really as receiver of the court in the eastern division cause, for the purpose of operating the La Crosse road as a continuous line, without diversion of travel or business from the eastern division at Portage.

In this connection, let me call your attention to extracts from two opinions of the court, explaining the reason why the order was made giving you possession:

"The only legitimate question before the court in June last, when the order modifying the action of the receiver was made, and now is, how is the road to be operated, during the pendency of the appeal, as an entire road under the grant of the charter, to the best interests of the parties, the creditors, and the public? It was conceded that the use of the road could not to be obstructed at Portage City, but that the cars must be run through the whole length of the road. * * * * This order was intended to prevent a diversion of the travel and business on the western division from the eastern, and to save the expense to two sets of employees, and to prevent interruption of the public."

And again the judge says, in another opinion:

"The first duty of the court is to secure the interests of the public under the grant of the charter to the La Crosse company.
688 The second duty is to protect the rights of the lien creditors and the parties litigant. The receiver was appointed for these two purposes."

"For this purpose the orders of the 12th June, 1863, in this case and in the Howard case, modifying the original orders appointing the receiver, were made. The Milwaukee and St. Paul company were allowed by those last orders to operate temporarily the eastern division of the road in connection with the western division, of which they were owners, for the sake of economy in operating the road, to secure the use of all the rolling stock on the whole line, and to restrain the St. Paul company from diverting trade and travel from the eastern division. It was known that the St. Paul company were about to connect their division from Portage City to the Watertown road, and thence to Milwaukee, which might affect the eastern division."

"The order allowing that company to operate the eastern division, subject to the control of the court and the supervision of the receiver, and under heavy bonds with adequate security, prohibiting them from putting a car on their extension from Portage or on any other road east of that point, I considered it a proper duty for the public and the parties to secure the use of a continuous route according to the charter, without interruption or deviation of trade or travel between the termini of the road."

You will judge for yourself how faithfully you have executed the

spirit of the orders giving you possession of our property, and what are the chances of your liability in your bond.

In the same connection, let me also remind you of a decision of the Supreme Court of the United States upon this very subject, reported in 2 Wallace, 609, in which the court, after an examination of the mortgages and a review of the foregoing orders, decide:

1. That the land grant mortgage did not cover the rolling stock belonging to the eastern division; and

2. If it had done so, the decree of the court, under which alone you can claim title, ordered the sale of only the forty box cars. It was after this decision of the Supreme Court of the United States, and in pursuance of a mandate from that court that the circuit court ordered you to deliver up this rolling stock to our company on payment of the money, &c., which you now refuse to do.

This decision also sets at rest the pretence now repeated by you, in the letter before me, that you received possession of this rolling stock as purchaser. The court say, 2 Wallace, p. 240:

"On the 7th day of May, two days after the order of confirmation, the Milwaukee and St. Paul Railway Company presented their petition for the discharge of the receiver, and for possession of the
689 property which they had purchased. The court thereupon made an order 'that the receiver deliver over to said Milwaukee and St. Paul Railway Company the said road and appurtenances between Portage City and La Crosse, and the rolling stock and property specially described in the decree.' The only rolling stock specially described in the decree was the forty box cars, and the proportion of stock purchased by the receiver. The fact that this was ordered to be delivered to the purchasers, and no more, is almost conclusive of two things: first, that the judge understood his decree and previous rulings as we have interpreted them; and second, that he had no idea that he had confirmed a sale of all the rolling stock on the road to the purchasers at the sale. It is true that over a month later he ordered the eastern division of the road and the remainder of the rolling stock into the possession of the same company. But this was done to enable them to run the whole road as a through route, on the principle of public policy, and that it was better for all parties concerned. This he declared in an opinion delivered at the time, and it is substantially indicated in the orders."

I understand you derive great consolation from the fact that three of the judges dissented from that decision.

But on examining the dissenting opinion you will find that it in no way sustains your pretence of title. The majority of the court held that this rolling stock belonged, in severalty, not to you but to us; while the minority held that it did not belong to either of us, in severalty, but ought to be operated on the whole road for the benefit of both of us, and all concerned.

Two months after the order of the court requiring your company to deliver to us this rolling stock, as part of the eastern division, and after the decision of the Supreme Court of the United States above referred to, your counsel, Mr. John W. Carey, assisted Mr. Ogden to

obtain a decree in the eastern division suit for the sale of the mortgage premises in that cause; and that decree directs the sale of this rolling stock in the precise language of description employed in the order, as belonging to the eastern division. Under this decree the eastern division and this rolling stock were advertised for sale, and only saved by the payment by our company of near half a million of dollars as required by that decree.

This shows that your own counsel, Mr. Carey, regards this rolling stock as covered by the mortgage, which only describes rolling stock appurtenant to the eastern division, because he knew that the Supreme Court of the United States had decided, in the above-
690 mentioned suit between your company and ours, that the mortgage on the western division, under which alone you can claim, did not cover the rolling stock belonging to the eastern division. The language of the court (2 Wallace, 635,) speaking of mortgages on the eastern and western divisions, respectively, is: "But when we consider it [the descriptive part of the mortgages] in reference to the clear purpose of the parties to make the mortgages distinct and different as to every thing else conveyed by them, we conclude that it was intended that the rolling stock covered by each mortgage was that which was properly appurtenant to each particular division of the road."

From this you will see that Mr. Carey is blowing hot and cold on this question with a vengeance. In the eastern division cause, he claims and obtains a decree for the sale of all this rolling stock as part of the eastern division; but since that sale has been prevented, by our paying the money, he claims that this rolling stock belongs to the western division, not to the eastern.

This is not at all surprising after the former proceedings of your company. Mr. Carey, as your counsel, once obtained possession of the eastern division and this rolling stock, for the purpose of carrying out the "public policy of the State," to keep this a continuous line. You now not only seek to defeat this end, but Mr. Carey has signed an opinion denying the power of the legislature to prevent your doing so.

The Milwaukee and Minnesota Railroad Company, if it hears nothing further from you, will understand the foregoing letter of your manager as a refusal on the part of the Milwaukee and St. Paul Railway Company to obey the order of the court; and you, and each and every one of you, will be held responsible, not only in your corporate, but in your individual capacity, for damages.

Your letter, by way of adding insult to injury, offers to furnish us sufficient rolling stock to do our business. There is nothing in your past dealings with, or present relations towards, our company that can induce us to believe that you would be willing to do us any favor. This offer is therefore regarded as only an evidence that you know and feel that you are acting in a most high handed and illegal manner in disobeying the order of the court, and are only desirous of diminishing the damages you know we must ultimately recover against you.

You will please take notice that we demand of you a complete and

full performance of the order of the court in this behalf, and
691 do not wish to hire, or rent, borrow, or use, any rolling stock, except that which the order requires you to deliver, and that, and all of it, we claim and demand to be immediately delivered.

In this connection I may say, that the whole rolling stock the order entitles us to is necessary to do the business of our company; and we are desirous of receiving the same immediately, for the purpose of putting it in repair before the commencement of the spring business.

You will therefore please take notice that the Milwaukee and Minnesota Railroad Company demands an immediate compliance with said order, on the part of the Milwaukee and St. Paul Railway Company, and its directors, officers, agents, and employees, and especially of each and every of you to whom this is directed, it demands such compliance.

MATT. H. CARPENTER,
*Solicitor of the Mil. and Minn. R. R. Co.*

The Milwaukee and Minnesota R. R. Co, by—
A. FLEMING,
*Vice President.*

692 Circuit court of the United States, for the district of Wisconsin.

JAMES T. SOUTTER, survivors, &c., *vs.* THE LA CROSSE & MILWAUKEE Railroad Company and others. } In equity.

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

Nicholas Murray, being first duly sworn, says that at the city and State of New York he served the foregoing documents hereto attached upon the following named persons at the dates respectively set opposite their names, by delivering to and leaving with each of them a copy of said documents, and exhibiting then and there to each of said persons the said originals hereto attached at the time and as part of said servics, viz:

February 14th, 1866, Russell Sage.
" " " D. M. Hughes.
" " " N. A. Cowdrey.
" " " F. P. James.
" 15th " Washington Hunt.
" 16th " Horace Galpin.
March 5th " W. S. Gurnee.

NICHOLAS MURRAY.

Sworn before me this 21st day of March, 1866.
[SEAL.] FREDERICK BULL,
*Notary Public*, 58 *Wall st.*

Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c., *vs.* THE LA CROSSE & MILWAUKEE Railroad Company and others, defendants. } In equity.

DISTRICT OF WISCONSIN, *ss:*

William J. C. Forster, being first duly sworn, on oath says that at Milwaukee, in said district, on the 29th day of January, A. D. 1866, he served on the Milwaukee & St. Paul Railroad Company a duplicate of the foregoing printed and written document marked "A," certified under the seal of said court, and stamped with a United States revenue stamp, as the foregoing document "A" is stamped, by delivering the same and leaving the same with Alanson Cary, secretary of said Milwaukee & St. Paul Railway Company, in his said secretary's office, in said Milwaukee, and that he served said document "A" upon the persons named below, at the dates respectively set opposite their names, by delivering to and leaving with
693 each of them, at Milwaukee, in said district, a true copy thereof, and exhibiting to each of them at time of such service, the said original document marked "A," duly certified and stamped as aforesaid, viz:

January 30th, 1866, A. Reasoner, superintendent of said Milwaukee and St. Paul Railway Company.

January 30th, 1866, John W. Cary.

January 30th, 1866, Daniel Wells, jr.

January 27th, 1866, Robert Grace and J. Jones, who were then in possession of engine No. 26, mentioned in said order.

January 29th, 1866, J. A. Smith.

January 29th, 1866, Alexander Mitchell, president of said Milwaukee and St. Paul Railway Company.

January 26th, 1866, James Little, sr., and O. Blanchard, who were then in possession of engine No. 6, mentioned in said order.

January 30th, 1866, Asahel Finch, jr.

January 30th, 1866, S. S. Merrill, manager of said last-named company.

January 27th, 1866, Daniel Willey and W. McCauley, who were then in possession of engine No. 4, mentioned in said order.

And further says that the said persons who were at the time of such service in possession of said engines were in such possession as employees of the Milwaukee and St. Paul Railway Company.

This affiant further says that afterwards, at Milwaukee, in said district, he served a copy of the foregoing printed document marked "B" upon the persons named below, at the dates respectively set opposite their names.

February 5th, 1866, on S. S. Merrill.
" " " Alexander Mitchell.
" " " John W. Cary.

February 5th 1866, A. Finch, jr.
" " " Alanson Cary, secretary.
" " " A. Reasoner, superintendent.
" 10th " Daniel Wells, jr.

This affiant further says that the printed documents mentioned in this affidavit are those which are prefixed to the affidavit of Nicholas Murray foregoing.

WILLIAM J. C. FORSTER.

Subscribed and sworn before to me, this 7th day of April, A. D. 1866.

JAMES McFARLIN,
*U. S. Commissioner, District of Wisconsin.*

Circuit court of the United States for the district of Wisconsin

JAMES T. SOUTTER, survivor, &c., *vs.* THE LA CROSSE & MILWAUKEE Railroad Company and others. } In equity.

DISTRICT OF WISCONSIN, *ss:*

694 Erastus A. Patterson, being first duly sworn, on oath says that he is now auditor of the Milwaukee and Minnesota Railroad Company, and that ever since the 1st day of May, A. D. 1862, up to February 1st, 1866, he had been in the employment of the Milwaukee and St. Paul Railway Company.

He further says that when the receiver took possession of the La Crosse and Milwaukee railroad in this district, on the 11th day of June, 1860, the rolling stock on said road was as follows, exclusive of forty box cars mentioned in the final order or decree of sale in this cause, viz:

Twenty-three locomotives, numbered from one to 21, inclusive, and and number 26 to 27, inclusive.

Seventeen first-class passenger cars, numbered from one to four inclusive, and from six to eighteen, inclusive.

Nine second-class and baggage cars, numbered from 1 to 9, inclusive.

Three mail and express cars, numbered from one to three, inclusive.

Six caboose cars, numbered from 1 to six, inclusive.

One hundred eighty-two box freight cars, numbered even numbers from 2 to 328, inclusive, and from 410 to 444, inclusive.

One hundred and twenty platform cars, numbered odd numbers from 1 to 239, inclusive.

Forty-eight hand cars.

Six rubble cars.

Four wood cars.

Two snow ploughs.

This affiant further says that the rolling stock purchased and built by the receiver while in possession of said road, prior to the final decree or order of sale in this cause, was as follows: viz:

Eight locomotives, numbered 22 to 25, inclusive, and numbered 28 to 31 inclusive.

Two passenger cars, numbered19 and 20, inclusive.

Two hundred and twenty-eight box freight cars, numbered even numbers from 446 to 900, inclusive.

One wrecking and pile-driving car.

That since the demand made by the Milwaukee and Minnesota Railroad Company on the said receiver, Hans Crocker, and the Milwaukee and St. Paul Railway Company, in January last, for possession of that portion of said rolling stock to which said Milwaukee and Minnesota Railroad Company is or claims to be entitled under the orders and decrees in this cause, said receiver and said Milwaukee and St. Paul Railway Company have delivered to the Milwaukee and Minnesota Railroad Company the following rolling stock, viz:

Fourteen locomotives, numbered 1, 2, 7, 10, 11, 12, 14, 16, 20, 22, 24, 25, 29, and 30.

Eight passengers cars, numbered 1, 7, 13, 15, 17, 18, 19, 20.

Four baggage cars, numbered, 1, 4, 6, and 7.

Three mail and express cars, numbered 1, 2, and 3.

Four caboose cars, numbered 2, 5, 102, and 170.

Eighteen platform cars, numbered 151, 143, 93, 161, 101, 109, 137, 119 ,83, 23, 117, 77, 149, 97, 121, 151, 3, and 223.

One hundred and fifty box cars, numbered 84, 154, 60, 36, 10, 134, 138, 6, 242, 202, 292, 242, 390, 318, 456, 496, 494, 492, 446, 478, 452, 480, 466, 458, 450, 403, 468, 548, 566, 592, 512, 546, 506, 514, 524, 574, 588, 562, 516, 564, 560, 568, 534, 572, 576, 584, 590, 580, 554, 582, 552, 558, 586, 598, 670, 626, 622, 686, 688, 628, 655, 656, 616, 682, 646, 676, 620, 610, 642, 608, 630, 606, 666, 698, 696, 690, 614, 602, 658. 674, 696, 624, 662, 660, 684, 650, 678, 618, 600, 672, 664, 726, 730, 760, 712. 766, 756, 798, 710, 790, 774, 762, 782, 695 704, 740, 796, 722, 716, 754, 758, 742, 768, 738, 724, 776, 750, 708, 700, 748, 718, 702, 720, 746, 786, 752. 82, 810, 800, 850, 818, 874, 858, 842. 804, 854, 820, 808, 844, 802, 838, 828, 806, 876, 848, 856, 822, 338, 482.

All of which rolling stock, so returned and delivered to said Milwaukee and Minnesota Railroad Company, is parcel of the rolling stock on the said road when said receiver was appointed, or that which was purchased or built by said receiver, and that the balance of said rolling stock on said road when said receiver was appointed, and that purchased and built by said receiver as aforesaid, is still in the possession of said Milwaukee and St. Paul Railway Company, as this affiant is informed and believes, that is to say:

Seventeen locomotives.

Nine passengers' cars (two having been destroyed.)

Five baggage cars.

Two caboose cars.

Fifty-nine platform cars.

Two hundred and sixty box cars.

Four wood cars.

Thirty-two hand cars.

Two snow ploughs.
One wrecking and pile-driving car.

This affiant further says that of the said rolling stock so retained by the said Milwaukee and St. Paul Railway Company, the following formed part of the rolling stock on the road when the said receiver was appointed, as hereinbefore stated, viz:

Twelve locomotives.
Eleven passenger cars.
Five baggage cars.
Two caboose cars.
Fifty-nine platform cars.
One hundred and sixty-seven box cars.
Four wood cars.
Thirty-two hand cars.
Two snow ploughs.

And that the same are reasonably worth five hundred twenty-five thousand one hundred and seventy dollars; and that of said rolling stock purchased or built by said receiver, the following is restrained by said Milwaukee and St. Paul Railway Company:

Five locomotives out of eight.
Ninety-three box cars out of two hundred and twenty-eight.
One wrecking and pile-driving car.

And that the same is reasonably worth one hundred and eighty-five thousand dollars. And further, that he is informed by a letter from said Hans Crocker to Matt. H. Carpenter, hereto attached, and marked Exhibt No. 1, and verily believes that said Crocker, as re-receiver in this cause, on the 20th day of January, A. D. 1866, made a written demand on said Milwaukee and St. Paul Railway Company, a copy of which is hereto attached and marked Exhibit No. 2, and that said last-named company has never complied therewith, but on the contrary thereof, that said last named company, on the 27th day January, A. D. 1866, by a written communication addressed to said receiver, which is hereto attached and marked Exhibit No. 3, refused so to do, and still does refuse to comply therewith.

And further, that he is informed by a letter from said receiver to said Carpenter, which is hereto attached and marked Ex-
696 hibit No. 4, and verily believes that said Crocker afterwards, on the 31st day of January, A. D. 1866, made another communication to said last named company, a copy of which is hereto attached and marked Exhibit No 5.

This affiant further says that he is acquainted with the handwriting of S. S. Merrill and of Hans Crocker, and has seen them both write, and that the signatures respectively to said Exhibits Nos. 1, 2, 3, 4, 5, and 6, hereto and hereafter attached, are genuine.

This affiant further says that Exhibit No. 6, hereto attached, is the written refusal of the Milwaukee and St. Pau lRailway Company, by S. S. Merrill, its manager, to comply with the demand of said Milwaukee and Minnesota Railroad Company, contained in the printed document marked "A," attached prefixed to the foregoing affidavit of Nicholas Murray, and that the signature of said Merrill thereto is genuine.

This affiant further says that since the 1st day of January last, the following named persons have been and now are officers and directors of the Milwaukee and St. Paul Railway Company, viz: Alexander Mitchell, president and director, S. S. Merrill, manager and director, A. Reasoner, superintendent, Alanson Cary, secretary, and Washington Hunt, W. S. Gurnee, F. P. James, John W. Cary, Selah Chamberlain, Russell Sage, N. A. Cowdry, C. B. Wesley, Horace Galpin, David M. Hughes, and Daniel Wells, jr., directors.

This affiant further says that the said Milwaukee and Minnesota Railroad Company has suffered damages in consequence of the non-delivery of said rolling stock by the said Milwaukee and St. Paul Railway Company, its officers and directors, as it ought to have done in obedience to the order and decree of this court in this cause in that behalf, to a large amount, and in the opinion of this affiant, to an amount exceeding fifty thousand dollars.

ERASTUS A. PATTERSON.

Subscribed and to and sworn to before me, this 7th day of April, A. D. 1866.

JAMES McFARLIN,
*U. S. Commissioner, District of Wisconsin*

*Exhibit No.* 1.

MILWAUKEE, *Jan.* 30, 1866.

M. H. Carpenter esq., att'y, &c:

DEAR SIR: I enclose a copy of my letter of the 20th inst. to the Milwaukee and St. Paul Railway Company, demanding possession of the rolling stock, &c., and of their reply of the 27th, the delay was occasioned by the absence of Mr. Mitchell, the president of the road.

Very respectfully,

H. CROCKER, *Receiver. &c.*

*Exhibit No.* 2.

MILWAUKEE, *Jan. 20th*, 1866.

S. S. Merrill, esq., superintendent of the Milwaukee and St. Paul Railway:

DEAR SIR: In obedience to the order of the circuit court of the United States for the district of Wisconsin, I have this day surrendered to the Milwaukee and Minnesota Railroad Company the eastern division of the La Crosse railroad, with all the personal property and rolling stock then in my possession as receiver; the order further requires your company and myself to surrender such original rolling stock as I received under the appointment in the land grant case and Howard case, and which I surrendered to you under the order
697 of court in the land grant case; I therefore demand possession of all said rolling stock, for the purpose of surrendering the same to the Milwaukee and Minnesota Railroad Company; said order further requires me to deliver a part of certain property, enumerated

in the order, (copies of which have been served upon your company,) to the said Milwaukee and Minnesota R. R, Co., and part to your company. As a portion of said last-mentioned stock has, in operating the eastern division and making connections with the western, been necessarily run upon your division, and in fact been claimed by you, as rightfully in your possession under orders of the court, I now demand the same of you for the purpose of dividing the same as required by said orders, and request that you and said company voluntarily agree upon a fair division; if not, I must take the responsibility of dividing said stock as justly and as much in accordance with the interest of both companies as I can.

Very respectfully,

H. CROCKER, *Receiver*.

*Exhibit No* 3.

OFFICE OF THE MILWAUKEE & ST. PAUL RAILWAY COMPANY,
*Milwaukee, January 27th*, 1866.

Hans Crocker, esq., receiver, &c.:

DEAR SIR: Your favor, dated the 20th inst., is this day received.

We do not admit your exclusive possession of, or right to divide, the rolling stock purchased and built by you as receiver, consisting of eight locomotives, two passenger cars, one baggage car, six caboose cars, and one hundred and thirty-four freight cars. This rolling stock has, since the first day of May, 1864, been in the joint possession of yourself and this company. The order of July 18th, 1865, entered by the circuit court of the United States in the case of Soutter, survivor, &c., *vs.* La Crosse R. R. Co. *et al.*, required that you should deliver to the Milwaukee and Minnesota Company the proportion of said rolling stock belonging to the eastern division, but made no provision for the division thereof.

It is therefore necessary for yourself and this company to make some division of it, in order that you may be able to carry out the said order of the court.

For that purpose we propose a division as follows: You may take six of the eight locomotives, one of the two passenger cars, all of the caboose cars, and one hundred and twelve of the one hundred and thirty-four freight cars, subject to the further order of the court, or such arrangement as may be made between the parties interested to effect a more perfect and accurate division.

If this proposition is not satisfactory to you, we should desire to receive one from you.

Of the locomotives so purchased by you, Nos. 22, 24, and 25 are now on the eastern division, and in possession of the Milwaukee and Minnesota co.; No. 36 (formerly 31) is at Portage, subject to your order, and Nos. 29 and 30 are now undergoing slight repairs at our shop at Watertown, but will be at Portage on Tuesday next subject to your order; one of the passenger cars, and nearly all the caboose cars are now on the eastern division, and a considerable portion of

the freight cars. The remainder of the freight and caboose cars will be delivered at Portage, subject to your order, as soon as they can be collected and brought there. The locomotives, Nos. 23 and 28, which we propose to retain are at our shops at Watertown, unfit for use, and being repaired by this company.

698 The rolling stock that was on the road when you took possession as receiver on the 11th day of June, 1860, was, by an order of the court made in the land-grant cause, on the 12th day of June, 1863, delivered to this company as purchaser under the decree in that case, and since that time has not been in your custody or under your control, but has been in the exclusive possession of this company. We must therefore decline to recognize your right as receiver to receive or demand from us any portion of said last-named rolling stock.

The title to this stock is now in litigation between this company and the Milwaukee and Minnesota company, and whenever the court shall have passed upon our right we shall cheerfully conform to its decision.

In the meantime, in order that the public may not be incommoded, and that the Minnesota company may have ample stock to operate said eastern division, we shall furnish of said rolling stock to said company sufficient in addition to their proportion of that purchased by the receiver to operate their road.

We have already furnished them from said original stock nine locomotives, and passenger and freight cars for the transaction of their business, and shall furnish them all that may be necessary in addition to their proportion of that purchased by the receiver for the successful operation of said eastern division.

Yours, respectfully,

S. S. MERRILL,
*General Manager.*

*Exhibit No.* 4.

MILWAUKEE, *January* 31, 1866.

M. H. Carpenter, att'y, &c., esq.:

DEAR SIR: I enclose a copy of a letter to-day sent by me to the M. and St. R. W. Co., in reference to division of the rolling stock owned jointly by them and your company; that is, the rolling stock bought and built by me. Not being an expert, and not knowing the present value of this property, I have thought it proper to leave the matter to those I believe competent to determine this value. If this arangement is satisfactory to your company, I would like their approval in writing.

Yours, &c.,

H. CROCKER, *Receiver.*

*Exhibit No. 5.*

MILWAUKEE, *January* 31, 1866.

S. S. Merrill, esq., manager of the M. & St. P. R. W. Co.:

DEAR SIR: I am desirous, as soon as possible, of making a division of the rolling stock purchased and built by me, and owned jointly by the eastern division of the L. and M. R. R., and your company, upon the basis fixed by the court. I assume, that in making this division, we must take the stock as it now is, and not as when built or purchased by me. For the purpose of making this division, I propose that Mr. Dwight Goodrich and Mr. W. E. Kittridge shall estimate and return to me the value of this rolling stock at the present time, and upon receiving their return and award, I will make a division as nearly just as possible.

You may object to the parties, as they are both now in the service of the eastern division, (the M. and M. R. R. Co.) I have selected them, as they were in my service when this rolling stock was
699 purchased and built, and both being competent men, I think them best qualified to determine the value of this property. While I have the power to make an arbitrary division, I prefer to make one satisfactory to all parties.

Yours, &c.,

H. CROCKER.

Each car and engine will be numbered and appraised.

*Exhibit No. 6.*

OFFICE OF THE MILWAUKEE AND ST. PAUL RAILWAY COMPANY,
*Milwaukee,* 186 .
*Milwaukee, Jan. 29th,* '66.

To the Milwaukee and Minnesota Railroad Company:

Your printed demand upon this company for the delivery to A. Fleming of all of the rolling stock mentioned in the order of July 18th, 1865, entered in the case of James T. Soutter, survivor, *vs.* La Crosse and Milwaukee Railroad Company and others, in the circuit court of the United States for the district of Wisconsin, is this day received.

The rolling stock mentioned in said order purchased by the receiver, consisting of eight (8) locomotives, two (2) passenger cars, one (1) baggage car, six (6) caboose cars, and one hundred and thirty-four (134) house freight cars, has never been divided, but since the first day of May, 1864, has been in the joint possession of the receiver and of this company, and is owned jointly by this company and the east. division of said La Crosse and Milwaukee railroad.

The order of July 18th, 1865, requires the receiver to deliver a certain undivided proportion of said rolling stock to you, but provides no way or means of making a division or specifying the particular locomotives or cars to be delivered.

A portion of this stock has already been delivered to you by the

receiver, to wit, three (3) locomotives, and a large number of cars. One of the locomotives is now at Portage subject to the order of the receiver, and the remaining four (4) are in our shops at Watertown undergoing repairs. Two of them will be at Portage this week under the control of the receiver, and the cars on our line are being collected as rapidly as possible at Portage, so that the proportion belonging to the eastern division may be delivered by the receiver.

In order to enable the receiver to deliver to you in severalty the proportion of said rolling stock belonging to the eastern division, we have proposed to him a division thereof subject to future review and correction by the court, or by the agreement of parties interested, and are ready to co-operate with him in making a fair and equitable division thereof.

We claim no interest in or control over the proportion of rolling stock purchased by the receiver belonging to the eastern division, and will unite with the receiver in making a division of the stock so purchased, and furnish him every facility in our power, when divided, to make an immediate delivery thereof to you.

The rolling stock which was on the road June 18th, 1860, of which the receiver took possession, was, by the order of the district court made on the 12th day of June, 1863, in the land grant foreclosure suit, taken from the receiver and delivered to this company, as purchaser thereof under the land grant decree, and the receiver was, as to said property, discharged, since which time this company has been in the exclusive possession thereof. The title of this stock is now in litigation between this company and you, which litigation is not yet determined. No order has been entered therein disturbing
700 our possession. Whenever the court shall have disposed of the question there raised, and settle the title and ownership of said stock, we shall cheerfully conform to its decision.

In the meantime we would avoid, so far as possible, any inconvenience to the public or injury to you arising therefrom; we shall, therefore, furnish to you of said stock sufficient to enable you, with your proportion of that purchased by the receiver, to operate your road.

To that end we have already delivered to you, as of our own property, nine (9) of said locomotives, together with passenger, mail, baggage, and freight cars, which are now in your possession, and should the stock already furnished you by us, together with the proportion of that purchased by the receiver belonging to you, prove insufficient to operate your road, we will furnish, in addition of said original stock, an ample and more than sufficient quantity for that purpose; and in case of a difference of opinion on the subject, we will submit to the decision of any suitable and impartial umpire you may name.

Further than this we do not propose to deliver to you any part or portion of said rolling stock so on said road on the 11th day of June, 1860, but claim the same as of right and legally and properly in our possession and under our control; and we are advised that the course above indicated is practically a full and complete compliance with

said order of July 18th, 1865, so far as the same is obligatory or binding upon us.

Respectfully, yours,

S. S. MERRILL,
*General Manager.*

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

To John W. Carey, esq., solicitor and counsel for the Milwaukee and St. Paul Railway Company:

SIR: You will please take notice that on the opening of the said court, at the court-room of said court, in the city of Milwaukee, on Wednesday morning, April 25, 1866, or so soon thereafter as counsel can be heard, a motion will be made by me on behalf of the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, to attach the officers and directors of the Milwaukee and St. Paul Railway Company, viz:

Alexander Mitchell, president; S. S. Merrill, manager; A. Reasoner, superintendent; A. Cary, secretary and treasurer; and Washington Hunt, W. S. Gurnee, F. P. James, J. W. Cary, S. Chamberlain, Russell Sage, N. A. Cowdry, C. B. Wesley, Horace Galpin, D. M. Hughes, and Dan'l Wells, jr., directors of said Milwaukee and St. Paul Railway Company, for contempt of said court, in refusing to comply with the order of said court made in this cause on the
701 18th day of July, A. D. 1865; and for refusal to deliver to the Milwaukee and Minnesota Railroad Company the rolling stock mentioned and described in said order, according to the demand of the Milwaukee and Minnesota Railroad Company in that behalf heretofore made by said company on the Milwaukee and St. Paul Railway Company, and the officers and directors thereof, a copy of which demand and accompanying papers is Exhibit A to affidavit of Nicholas Murray, hereto attached, and that they may be dealt with according to law.

And for an order of said court, sequestrating the stock, railroad property, assets and effects of the said Milwaukee and St. Paul Railway Company, and for the appointment of sequestrators therefor, to receive and manage the same until said company, its officers and directors, shall comply with said order of said court, and answer all damages in the premises; and for such other and further relief as the said Milwaukee and Minnesota Railroad Company may be entitled to in the premises, and as shall be agreeable to equity and good conscience, a copy of which motion is hereto hereafter attached.

This motion will be founded on the annexed and foregoing papers, and upon the records, proofs, and papers on file in this cause.

You will further take notice that, on the hearing of said motion, an affidavit of Nicholas Murray will be read, correcting a mistake of date of service of papers, as therein set forth, from 1856, as erroneously written, to 1866, as the fact is, as to said service.

Dated April 5th, 1866.

MATT. H. CARPENTER,
*Sol. for the Mil. & Minn. R. R. Co.*

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c., *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD Company and others, defendants.

Here in court comes the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, by Matt. H. Carpenter, its solicitor, and on the record proofs, and papers on file in this cause, and on foregoing affidavits and papers hereto attached, moves the court now here for an order of said court herein directing attachment to issue out of, under the seal of this court in due form of law, or in such form as the said court shall by said order direct against Alexander Mitchell, president of the Milwaukee and St. Paul Railway Company; S. S. Merrill, manager of said company; A. Reasoner, superintendent of said company; A. Cary, secretary and treasurer of said company; and Washington Hunt, W. S. Gurnee, Frederick P. James, John W. Carey, Selah Chamberlain, Russell Sage, N. A. Cowdry, C. B. Wesley, Horace Galpin, David M. Hughes, and Daniel Wells, jr., directors of said company; and that such proceed-
702 ings may be thereoupon had as are agreeable to equity and good conscience, to convict said officers and directors of contempt of this court, for disobedience to and refusal to comply with the order of said court, as shown in the annexed and foregoing papers; and that said officers and directors may be held in close custody until they shall obey said order, by delivering possession of said rolling stock under and according to the said order of said court, a certified copy of which is part of said document A, attached to the foregoing affidavit of Nicholas Murray, and for such other, and further, or different relief in the premises as shall be agreeable to equity and good conscience.

The said Milwaukee and Minnesota Railroad Company further move said court for an order to be made in this cause sequestrating the stock, railroad property, real and personal, assets and effects of the said Milwaukee and St. Paul Railway Company, and for the appointment of sequestrators to receive, hold, and manage the same until said last named company, its officers and directors, shall comply with the said order of this court in the cause hereinbefore mentioned, and until said company shall pay, or cause to be paid, all damages to this defendant arising from the said disobedience of said order by said last-named company, its officers and directors, or until such other

time as this court shall direct; and that it may be referred to a master of this court to ascertain and report to said court the amount of said damage so sustained by this defendant; and that this defendant may have such other and further or different relief in the premises as shall be agreeable to equity and good conscience; and that the said officers and directors of said company may be adjudged and decreed by said court to be personally liable for the damages sustained by this defendant in the premises; and that they may be personally ordered and decreed to pay the same when ascertained as aforesaid, and that they may be committed until the same be ascertained and paid, or that this defendant may have such other and further relief in the premises as the nature of its case may require, and as shall be agreeable to equity and good conscience.

MATT. H. CARPENTER,
*Solicitor for the Mil. & Minn. R. R. Co., Defendant.*

I accept service of this motion and papers for next Wednesday morning, April 7, 1866.

JOHN W. CARY,
*Solicitor for M. & St. P. R. W. Co.*

Filed April 11th, 1866.

United States circuit court.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

DISTRICT OF WISCONSIN, *ss:*

Matt. H. Carpenter, being first duly sworn, on oath says that a copy of said chattel mortgage mentioned in the answer of the
703 Milwaukee and St. Paul company and others, filed this day to the motion for attachment and sequestration, &c., as appears from the printed record in the land grant case, so called, is attached hereto and marked Exhibit No. 1.

MATT. H. CARPENTER.

Subscribed and sworn to before me, this 13th day of April, A. D. 1866.

JAMES McFARLIN,
*U. S. Commissioner for Dis. of Wis.*

*Exhibit No.* 1.

At a meeting of the board of directors of the La Crosse and Milwaukee Railroad Company, held at the office of the company, in the city of Milwaukee, on the 4th day of September, A. D. 1857, the following proceedings were had:

Mr. Palmer presented the following additional deed of trust and resolution, authorizing the execution of the same by the president and secretary, which resolution was adopted by the board:

*Resolved*, That the president and secretary be authorized and directed to execute to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, in behalf of this company, a further deed of trust or mortgage, of which the following is a copy, viz:

This indenture, made and entered into this 4th day of September, in the year of our Lord one thousand eight hundred and fifty-seven, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of Wisconsin, parties to the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, all of the city and State of New York, parties of the second part.

Whereas the said parties of the first part did, on the 31st day of December, in the year one thousand eight hundred and sixty-six, duly execute and deliver to the said parties of the second part, as trustees, a deed of trust, bearing date on that day, wherein and whereby the said parties of the first part, for the purpose of securing the payment of certain moneys which the said party of the first part had determined to borrow.

Stipulated and provided for the issue of the bonds of the said La Crosse and Milwaukee Railroad Company, for ten millions of dollars of the date, tenor, and description in the said deed of trust particularly set forth, and payable, principal and interest, as therein provided; and whereas the said railroad company, in and by the said deed of trust, granted, bargained, sold, conveyed, and confirmed unto the said parties of the second part, all and singular the several tracts of land which then was, or thereafter might be, or constitute the site of the roadway, turn-outs, engine-houses, workshops, depots, and other buildings of the said company, and other lands, buildings, and estate and property, real and personal and mixed, therein specially and particularly described, which conveyance was in and by the said deed of trust declared to be and was made to the said parties of the second part, and the survivors and survivor, successors and successor of them and their and his heirs and assigns in trust and upon the trusts, terms, and conditions therein particularly expressed.

And whereas the said parties of the first part did, in and by the said deed of trust, covenant and agree to and with the said trustees, the said parties of the second part, that the said railroad company would, from time to time, during the continuance of the trust,
704 make, execute, cause to be duly recorded, and deliver to the said trustees, or to their successors in the said trust, all such further conveyances and assurances, and would do all such further acts as might either be necessary or proper for more effectually vesting in the said trustees all such right, title, interests, or estates, both legal and equitable, as said railroad company then had, or may thereafter acquire of, in, and to all and every part of the property thereby conveyed, or intended to be conveyed.

And whereas the said railroad company had, at the time of the execution of the said deed of trust, or have since, acquired certain property, which was conveyed, or intended to be conveyed, thereby, and of which a further conveyance is deemed proper for more effectually vesting in the said trustees all the title, right, interest, and estate, legal or equitable, which the said company then had or have since acquired thereby [therein.]

Now, therefore, know all men by these presents, that the said parties of the first part, in pursuance of the covenants and stipulations in the said deed of trust contained, and in consideration of the premises, and of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm unto the said parties of the second part all and singular about 11,000 tons of iron rails, being all the iron purchased for and belonging to the said company, and lying at Milwaukee and elsewhere along the line of the road of the said company, or wherever the same or any portion thereof may be and not actually laid down in the track thereof, and all the singular the locomotives, cars, engines, tools, materials, lumber, office furniture, and personal property of every description belonging to the said company wherever the same may be.

To have and to hold all and singular the property hereby conveyed, or intended to be conveyed, to the said parties of the second part, and the survivors and survivor of them, their successors and successor, and their and his heirs and assigns, upon the like trust terms, trusts, and conditions, as are in the said deed of trust contained, and all the power and authority granted to the said parties of the second part, in and by the said deed of trust, in relation to the property conveyed thereby, and in relation to the sale, conveyance, and disposal thereof, and in relation to the disposition and application of the proceeds of such property in case of sale, are hereby conferred upon, granted to, and vested in, the said parties of the second party, in relation to the property hereby conveyed, as fully and effectually as if the property hereby conveyed had constituted a part of the roadway of the said company, described in the said deed of trust, and the date thereof.

And the said parties of the second part are hereby charged with all the duties in relation to the property hereby conveyed and the sale and disposition thereof, and of the proceeds thereof, in case of sale thereof with which they are charged in relation to the property conveyed, or intended to be conveyed, by the said deed of trust; and the said parties of the second part may, and they are hereby authorized and required to treat the property hereby conveyed in the same manner, and to hold the same upon the same terms, trusts, and conditions, and for the same purposes, as the property mentioned in the said deed of trust, and not otherwise; and may take possession thereof, and sell and dispose of the same in the same manner, at the same time, and upon the same conditions, as they may take possession of a d sell and dispose of the property in the said deed of trust men-

tioned, and as a part thereof, and not otherwise; and it is hereby declared to be the object and intention of these presents and of the parties hereto to subject the property hereby conveyed, or
705 intended to be conveyed, and every part thereof, to the operation of the said deed of trust, and each and every stipulation and covenant therein contained as fully and effectually to all intents and purposes as if the said property hereby conveyed, or intended to be conveyed, had at the time of the execution of the said deed of trust constituted a part of the property thereby conveyed, and had then been embraced in and conveyed thereby.

In witness whereof, the said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, in the day and year first above written.

BYRON KILBOURN,
*President.*

[SEAL.] J. HADLEY,
*Sec. of the R. R. Co.*

In the presence of—
H. M. PEABODY.
E. H. WHALING.

STATE OF WISCONSIN, *Milwaukee County, ss:*

On the 4th day of September, in the year one thousand eight hundred and fifty-seven, before me came Byron Kilbourn, the president of the La Crosse & Milwaukee Railroad Company, with whom I am personally acquainted, and who being by me duly sworn, says that he resides in the city of Milwaukee, in said county, and that he is president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the foregoing indenture is the common and corporate seal of the said railroad company, and was affixed to the said indenture by order of the board of directors of said company for the uses and purposes therein expressed, and that he, by like order, did subscribe his name thereto as president of said company, and that Jackson Hadley, as secretary of said company, subscribed his name thereto by like order and authority.

H. L. PALMER,
*Notary Public, Milwaukee County.*

And to affix thereto the corporate seal of the company, and to cause the same to be recorded in the office of the secretary of state, and to file copies thereof whenever necessary to render the same an effective security, and to deliver the same, when so executed and recorded, to the said trustees.

Filed April 13, 1866.

706 The Milwaukee & Minnesota Railroad Company, also read in evidence copy of contract between S. Chamberlain and the La Crosse & Milwaukee Railroad Company, as follows:

*Exhibit No.* 9.

Contract.—La Crosse & Milwaukee Railroad Company with Selah Chamberlain.—Copy from directors' minutes.

*Resolved*, That a contract be entered into with Selah Chamberlain, which shall be signed by the president and secretary, and sealed with the corporate seal of the company, in the words and figures following, to wit:

This indenture, made and entered into this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, by and between the La Crosse & Milwaukee Railroad Company, a corporation duly created and existing under and
707 by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleaveland, and State of Ohio, party of the second part:

Witnesseth, that the said parties have mutually undertaken and agreed, and by these presents do undertake and agree, to and with each other, that the contract heretofore entered into between the said parties for the construction of the western division of the La Crosse and Milwaukee railroad from Portage City to La Crosse, excepting the bridge across the Wisconsin, river, at Kilbourn City, and which contract bears date the 20th day of January, A. D. 1857, and the supplemental contract entered into between the same parties, and bearing date the 30th day of April, A. D. 1857, shall be, and the same are hereby, modified as follows, viz:

The said party of the second part shall proceed to complete the construction of said railroad as far as the depot at New Lisbon, in the county of Juneau, with reasonable despatch, and by the first day of December next. The time for completing said railroad from New Lisbon to La Crosse is extended indefinitely, and the said party of the second part shall construct the said railroad between the two last-named points as fast as and no faster than the said party of the first part shall be prepared and ready to pay the said party of the second part for the same in cash, or monthly estimates, according to the terms and stipulations of the aforesaid contract.

The contract entered into by and between said parties on the twentieth day of December, A. D. 1856, for the ballasting that portion of the La Crosse and Milwaukee railroad extending from Beaver Dam to Portage City, is hereby so modified that the said party of the first part shall not provide or furnish the motive power and cars requisite for doing said work, but that the motive power so used shall be a part of that specified in a contract between said parties entered into simultaneously with this contract for the leasing of said road, and that said party of the second part shall, for all ballasting which he shall do on said railroad between Milwaukee and Beaver Dam, under the direction and by order of the chief engineer of said company, be paid at the rate of fifty cents per cubic yard, to be measured in the gravel pit from whence the material shall be taken.

In consideration of the aforesaid extension of the time of constructing the said railroad from New Lisbon to Portage City, and of the damages which the said party of the second part will sustain by reason of such extension and by loss, as teams, materials, tools, machinery, and in other ways, and also in consideration of the mode in which the said party of the second part is to be paid the amount now due to him, and the amount to become due to him for finishing said railroad to New Lisbon, and in consideration of the failures and delays of the said party of the first part in making payments to the said party of the second part upon estimates heretofore due, and in further consideration of the services, risks, and personal expenses
708 of the said party of the second part in the operation and management of said railroad, as hereinafter referred to, and more particularly set forth in said contract of lease, the said party of the first part hereby agrees to pay to the said party of the second part the liquidated sum of two hundred thousand dollars, which sum is mutually agreed upon by said parties as an equivalent for the aforesaid consideration.

It is further stipulated and agreed that by or before the 20th day of October, A. D. 1857, a full and correct statement shall be made out of the amounts due to the said party of the second part on the 30th day September, 1857, under and by virtue of the said contracts of January 20th, 1857, April 30th, 1857, and November 20th, 1856, which sum, together with the aforesaid sum of two hundred thousand dollars, ($200,000,) shall be the balance due to the said party of the second part on the 1st day of October, 1857, and shall be charged by said party of the second part to the said party of the first part, and on the first day of every month thereafter the said party of the second part shall charge the said party of the first part with the amount which shall be due under or by virtue of either of said contracts or this contract in constructing the said railroad between Portage City and New Lisbon, or in ballasting between Milwaukee and Portage City, and shall credit said party of the first part with such sum as the said party of the first part shall be entitled to receive from the net earnings of said railroad, by virtue of the said contract of lease entered into between said parties, simultaneously with these presents.

It is further agreed between the said parties, that on the 1st day of July, 1858, and on the first day of each July and each January thereafter, a semi-annual statement of the accounts between said parties shall be made out, in which interest shall be computed up to the day of making out such accounts, at the rate of twelve per cent. per annum.

It is further agreed between the said parties, that whatever sums shall hereafter become due to said party of the second part, for any work done on the construction of said railroad, between New Lisbon and La Crosse, shall be paid to him by said party of the first part from the means of said company, derived from other sources than the income of said railroad.

In witness whereof the said party of the first part has caused these presents to be signed by its president and secretary, and the corpo-

rate seal of said company to be affixed thereto, and the said party of the second part has affixed his signature and seal the day and year first above written.

La Crosse and Milwaukee Railroad Company,
By BYRON KILBOURN, *President.*
[L. S.] JACKSON HADLEY, *Secretary.*
[L. S.] S. CHAMBERLAIN.

709 Circuit court of the United States of America for the ninth circuit and district of Wisconsin.

NEWCOMB CLEVELAND
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company.

Judgment rendered for the plaintiff for the sum of $111,727 71. Costs taxed at $544 15.

Judgment docketed October 7th, 1857.

FINCH & LYNDE,
*Plaintiff's Attorneys.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, do hereby certify that I have compared the foregoing with the original docket, now of record in my office, and that it is a correct transcript therefrom, and of the whole thereof, in a certain action, wherein Newcomb Cleveland is plaintiff and the La Crosse and Milwaukee Railroad Company is defendant.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this 4th day of December, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the .

[SEAL.] A. SCOTT SLOAN, *Clerk.*
By JAMES McFARLIN, *Deputy.*

The Milwaukee and Minnesota Railroad Company further read in evidence the exceptions of the Milwaukee and St. Paul Railway Company to the several reports of H. L. Palmer, auditor in second mortgage foreclosure suit, as follows:

710 Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

The Milwaukee and St. Paul Railway Company, by John W. Cary its solicitor, comes and excepts to the report of H. L. Palmer filed

in this cause on the 30th day of August, A. D. 1865, as follows, to wit:

First. To the finding of said auditor as stated in said report "that the whole value of the rolling stock on the road of the Milwaukee and St. Paul Company and on the eastern division of the La Crosse and Milwaukee railroad from February 28th to and including July 31st, 1865, was $1,201,258 65."

Second. To the finding of said auditor, as contained in said report, "that of the aforesaid rolling stock the value of $695,295 14 thereof belonged to the owners of the eastern division of the said La Crosse and Milwaukee railroad."

Third. To the finding of said auditor, as stated in said report, "that the Milwaukee and St. Paul Railway Company should be charged for the use of rolling stock belonging to the owners of the eastern division on its road from the 28th day of February, 1865, to and including the 31st day of July, 1865, the sum of $93,647 15."

Fourth. To the finding of said auditor, as stated in said report, "that the sum of $33,094 51 is due the receiver from the Milwaukee and St. Paul Railway Company for the use of rolling stock belonging to the owners of the eastern division of the La Crosse and Milwaukee railroad on the road of the Milwaukee and St. Paul Railway Company from February 28, 1865, to July 31st, 1865."

Whereas he should have found and reported that nothing was due said receiver from said company for the period aforesaid, either for the operation of said eastern division or use of rolling stock.

JOHN W. CARY,
*Solicitor for Milwaukee & St. Paul Railway Co.*

711 Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

The Milwaukee and St. Paul Railway Company, by John W. Cary, its solicitor, comes and excepts to the report of H. L. Palmer filed in this cause on the 16th day of April, A. D. 1866, as follows, to wit:

First. To the finding of said auditor, as stated in said report, that the whole value of the rolling stock on the road of the Milwaukee and St. Paul Railway Company and on the eastern division of the La Crosse and Milwaukee railroad from the first day of August, 1865, to and including the 9th day of January, 1866, was $1,493,042 63.

Second. To the finding of said auditor, as contained in said report, that of the aforesaid rolling stock the value of $695,295 14 thereof belonged to the owners of the eastern division of the said La Crosse and Milwaukee railroad.

Third. To the finding of said auditor, as stated in said report, that the Milwaukee and St. Paul Railway Company shall be charged for the use of rolling stock belonging to the owners of the eastern divi-

sion on its road for the period of time from the 1st day of August, 1865, to the 9th of January, A. D. 1866, the sum of one hundred and sixteen thousand six hundred and eighty dollars and thirty cents, ($116,680 30.)

To the finding of said auditor, as stated in said report, that there should be charged to the Milwaukee and St. Paul Railway Company for the use of rolling stock belonging to the eastern division of the La Crosse and Milwaukee railroad from August 1st, A. D. 1865, to January 9th, A. D. 1866, over and above the amount expended by the Milwaukee and St. Paul Railway Company for repairs on the said rolling stock, the sum of forty-eight thousand and eleven dollars and fifty-seven cents.

JOHN W. CARY,
*Sol'r for M. & St. P. R'y Co.*

The Milwaukee and Minnesota railroad further read in evidence the affidavit of Russell Sage, and substitution of Sage as att'y in fact of James T. Soutter, as follows:

*Affidavit of Russell Sage, Sept. 26th, 1864.*

712 United States circuit court, district of Wisconsin.

JAMES T. SOUTTER, surviving trustee,
*vs.*
LL CROSSE & MILWAUKEE R. R. and others.

CITY OF MILWAUKEE:

Russell Sage, being duly sworn, says: That the paper, hereto annexed, marked "A," is a true copy of the original power of attorney, which is in his possession, executed by James T. Soutter, the complainant in the above-entitled cause, to Timothy H. Porter, esq., and that the annexed paper, marked "B," is a true copy of a power of substitution to the above-named power of attorney, the original of which power of substitution is in the affiant's possession.

RUSSELL SAGE.

Subscribed and sworn before me, Sept. 26, 1864.
A. SCOTT SLOAN, *Clerk.*

"A."

Know all men by these presents, that I, James T. Soutter, surviving trustee under the deed of trust below described, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Timothy H. Porter, esquire, of the city and State of New York, my true and lawful attorney for me, and in my name, place, and stead, to do each and every act and thing that I may lawfully do under a deed of trust made by the La Crosse and Milwaukee Railroad Company, dated August 17, 1857, to Greene C. Bronson and

myself in trust for the uses and purposes therein named, which is duly recorded in the office of the secretary of state for the State of Wisconsin, to which reference is here made.

And I hereby expressly revoke the power of attorney
713 given by Greene C. Bronson and myself to Francis A. Palmer and Prentis Dow, dated November 1st, 1859, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do, or cause to be done, by virtue hereof.

In witness whereof I have hereunto set my hand and seal the 28th day of December, in the year one thousand eight hundred and sixty-three.

[SEAL.] JAMES T. SOUTTER,
*Surviving Trustee.*

Sealed and delivered in presence of—
C. G. GREENE.
ZEH. PETITPIERRE.

[Revenue stamp, 25 cents.]

CONSULATE OF THE UNITED STATES OF AMERICA,
*Paris, France.*

Be it known, that on the twenty-ninth day of December, one thousand eight hundred and sixty-three, before me, John Bigelow, consul of the United States of America at Paris, in the empire of France, personally appeared James T. Soutter, known to me to be the person named in, and who executed the within instrument, and acknowledged the execution thereof for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and seal of office the day and year above written.

JOHN BIGELOW,
*U. S. Consul.*

"B."

*Copy of power of attorney substituting Russell Sage in place of Timothy H. Porter.*

714 United States circuit court, district of Wisconsin.

| | |
|---|---|
| JAMES T. SOUTTER, surviving trustee, &c., *vs.* LA CROSSE AND MILWAUKEE R. R. and others. | Substituting Russell Sage in place of T. H. Porter, in power of attorney, dated Dec. 28, 1863. |

I hereby substitute, delegate, and appoint Hon. Russell Sage to be the attorney of James T. Soutter, surviving trustee in the man-

agement of the above-entitled cause, and in all other matters pertaining thereto, as fully as I am authorized to do by virtue of a power of attorney made and delivered to me by said James T. Soutter, bearing date Dec. 28, 1863. It is expressly understood and agreed that said Sage has no power or authority to make either myself or the said James T. Soutter in any way personally liable for any damage, loss, cost, or charges of any kind.

New York, Sept. 21st, 1864.

[SEAL.] TIMOTHY H. PORTER.

Signed in presence of—
F. P. JAMES.

Indorsed: "Filed Sept. 26, 1864."

The Milwaukee and Minnesota Railroad Company further read in evidence the affidavits of Russell Sage, N. A. Cowdrey, Selah Chamberlain, and Frederick P. James, in opposition to the motion of said company for possession of the eastern division of the La Crosse & Milwaukee Railroad, made in the second mortgage foreclose case, based upon the stipulation of P. Dow and others, as follows:

715 District court of the United States, district of Wisconsin, in equity.

GREEN C. BRONSON & JAMES T. SOUTTER
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD Company, impleaded with other defendants.

In the matter of the application of the Milwaukee and Minnesota Railroad Company for a discharge of the receiver, and for possession.

DISTRICT OF WISCONSIN, *ss:*

Frederick P. James, of the city of New York, being duly sworn, says that Henry Vallette, of the city of Cincinnati, in the State of Ohio, is, as deponent is informed and verily believes, the owner and holder of forty-two thousand dollars of the bonds secured by the mortgage in process of foreclosure in the above-entitled suit, and that there now exists a contingent agreement between this affiant and the said Vallette for the purchase by this affiant of the said forty-two thousand dollars of bonds.

And affiant further says that he has had frequent conversations with the said Vallette upon the subject of the above-entitled suit, and of the application pending in which this affidavit is made; and this affiant, from such conversations, knows that said Vallette is utterly opposed to a change of possession of any part of the La Crosse and Milwaukee railroad from the hands of the receiver to that of the aforesaid Milwaukee and Minnesota Railroad Company, so called.

F. P. JAMES.

Subscribed and sworn to before me, April 27th, A. D. 1863.

J. M. MILLER, *Clerk.*

Indorsed: "Filed June 10, 1863."

716 The circuit court of the United States for the district of Wisconsin, in equity.

GREEN C. BRONSON and JAMES T. SOUTTER, trustees,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

In the matter of the motion of the Milwaukee and Minnesota Railroad Company for discharge of the receiver, and for possession.

DISTRICT OF WISCONSIN, *ss:*

Nathaniel A. Cowdry, of the city of New York, being duly sworn, says that he is the owner and holder, in his own right in part, and in part in trust for others, of one hundred and twenty-three thousand dollars of the bonds secured by the mortgage in process of foreclosure in the above-entitled cause.

And affiant further says that he has never given his consent to the stipulations upon which the above-entitled motion is based, nor, to his knowledge or belief, have any of the parties for whom he holds a portion of said bonds in trust given any such assent, but, on the contrary, he and they have steadily protested against said stipulations since the time when the existence of them was first brought to their knowledge; and further affiant saith not.

N. A. COWDREY.

Subscribed and sworn to, this 8th day of January, A. D. 1863, before me.

J. M. MILLER, *Clerk.*

Indorsed: Filed June 10, 1863.

717 The circuit court of the United States for the district of Wisconsin, in equity.

GREEN C. BRONSON and JAMES T. SOUTTER, trustees,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company.

In the matter of the motion of the Milwaukee and Minnesota Railroad Company for discharge of the receiver, and for possession.

DISTRICT OF WISCONSIN, *ss:*

Selah Chamberlain, of the city of Cleveland, in the State of Ohio, being duly sworn, says that he is the owner, in his own right, of one hundred and seventy-eight thousand dollars of the bonds secured by the mortgage in process of foreclosure in the above-entitled cause, said bonds being at present lodged with third persons to secure indebtedness of this affiant.

And this affiant further says that he was never consulted upon the

subject of the stipulations and agreements upon which the above-entitled motion is founded, and that he has never, directly or indirectly, given his assent thereto, but, on the contrary, has protested against the same since the time when their existence first came to his knowledge.

S. CHAMBERLAIN.

Subscribed and sworn to before me, January 8th, 1863.

J. M. MILLER, *Clerk.*

Indorsed: Filed June 10, 1863.

718 The district court of the United States for the district of Wisconsin, in equity.

GREEN C. BRONSON and JAMES T. SOUTTER, trustees, *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

In the matter of the motion of the Milwaukee and Minnesota Railroad Company for discharge of receiver, and for possession.

DISTRICT OF WISCONSIN, *ss:*

Russell Sage, of the city of Troy, New York, being duly sworn, says that he is the owner, in his own right, and the holder of eighty seven thousand dollars of the bonds secured by the mortgage in process of foreclosure in the above-entitled cause; and he further says that he has never, directly or indirectly, given his assent to the stipulations and agreements upon which the above-entitled motion is founded, but, on the contrary, has protested against the same.

RUSSELL SAGE.

Subscribed and sworn to, this 8th day of January, A. D. 1863, before me.

EDWARD KURTZ,
*U. S. Com'r.*

Indorsed: Filed June 10, 1863.

The Milwaukee and Minnesota Railroad further read in evidence the marshal's notice of sale of the eastern division, La Crosse and Milwaukee railroad, under the decretal order of sale entered in second mortgage case Sept. 28, 1865, as follows:

719 *United States marshal's sale.*

Circuit court of the United States, district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Willaner, Edward H. Broadhead, Newcomb Cleveland, William Gemmel, Joshua Hathaway, James Walstenholme, Edwin C. Lichfield, Ebenezer Higgins, George R. Mowry, Henry R. Eastman, Henry L. Simmonds, Dewitt C. Freeman, E. Bradford Greenleaf, sr., Frederick Lind, Sebastian Knetzger, Samuel C. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, The Mercantile Bank of Hartford, Conn., August Lauthoff, Charles Quentin, John H. Tesch, Byron Kilbourn, Nathaniel S. Bouston, The Juneau Bank, The Milwaukee, Watertown and Baraboo Valley Railroad Company, Cicero Comstock, George W. Chapman, Moses M. Davis, Charles Howard, and Henry Valette.

Under and by virtue of a decretal order of sale made by the circuit court of the United States for the district of Wisconsin, bearing date on the 28th day of September, A. D. 1865, I will expose for sale and sell at public auction, at the post office in the city of Milwaukee, on Thursday, the fourth day of January, A. D. 1866, at two o'clock in the afternoon of that day, all the following described mortgaged premises:

All and singular the railroad of said company, commencing in the city of Milwaukee and running thence to Portage City, a distance of ninety-five miles, which road has been constructed and is now in full operation; and also the railroad of said company (as well that part which has been constructed as that part which remains to be constructed) from Watertown by way of Columbus to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one-half of which last-mentioned road, being the part between Watertown and Columbus, was constructed at the time of the execution of the said mortgage and was then in full operation, including all and singular the several tracts, pieces, or parcels of land,
720 which then did or might thereafter constitute the site of the roadways, town sites, engine-houses, workshops, depots, and

other buildings, and all the other land and real estate which then constituted or might thereafter constitute or be a part of or appertain to said railroads, or either of them; and also all and singular the superstructures of said railroads, whether then made or made thereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appurtenant to said railroads or either of them, whether then built or made, or thereafter built or made; and also all and singular the locomotive engines, cars, and rolling stock, and all the materials, tools, implements, and utensils, and other personal property which had been procured for or used in connection with said roads, or either of them, prior to the appointment of Hans Crocker as receiver of said road, except forty box cars, numbered respectively 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and including as part of the said mortgaged premises such proportion of the rolling stock, bought by the receiver since his appointment, as the net earnings of the eastern division of said railroad bears to the earnings of the western division, as ascertained by the report of H. L. Palmer, and as confirmed by the court; and also all and singular the rights, liberties, and franchises of said railroad company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown by way of Columbus to Midland aforesaid, and all the property, real and personal, and all the rights, liberties, privileges, and franchises of said railroad company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown by way of Columbus to Midland. The said sale will be made without prejudice to any claim, right, or interest of Ephraim Mariner, of, in, or to the front sixty feet of lots five, (5,) six, (6,) and (7,) and the alley between lots five, (5,) and six, (6,) in block forty-one, (41,) in the second ward of the city of Milwaukee, as purchaser under two several judgments against the La Crosse and Milwaukee Railroad Company, one in favor of Hill and Rudd, and the other in favor of Joseph Carney, and that I will sell all the other property hereinbefore described, before I sell the railroad from Watertown by way of Columbus to Midland.

DARIUS C. JACKSON,
*U. S. Marshal in and for the District of Wisconsin.*

Milwaukee, Wis., October 11, 1865.

The Milwaukee & Minnesota railroad further read in evidence the following receipts:

721 $137,409 26. MILWAUKEE, *January* 10, 1866.

Received of Marhall & Ilsley four hundred and thirty-seven thousand four hundred and nine dollars and twenty-six cents, on check No. 16 of the circuit court of the United States for the district of Wisconsin, for amount ordered paid him on coupons in case of James T. Soutter, survivor, &c., *vs.* The La Crosse & Milwaukee Railroad Company and others.

RUSSELL SAGE.

5-cent revenue stamp.

$4,055 16. MILWAUKEE, *Jan'y* 10, 1866.

Received of Marshall & Ilsley, four thousand and fifty-five dollars and sixteen cents, on check No. 17 of the circuit court of the United States for district of Wisconsin, for interest on coupons ordered to be paid to him in case of James T. Soutter, survivor, &c., *vs.* The La Crosse & Milwaukee Railroad Company and others.

ALX. MITCHELL, *P't.*

5-cent revenue stamp.

$524 52. MILWAUKEE, *Jan'y* 10, 1866.

Received of Marshall & Ilsley five hundred and twenty-four dollars and fifty-two cents on coupons presented by me and ordered to be paid in case of James T. Soutter, survivor, &c., *vs.* The La Crosse & Milwaukee Railroad Company and others, on check No. 18 of U. S. circuit court, dist. of Wis.

E. MARINER.

5-cent revenue stamp.

$5,245 20. MILWAUKEE, *Jan'y* 17, 1866.

Received of Marshall & Ilsley five thousand two hundred and forty-five dollars and twenty cents, for coupons on ten bonds of second mortgage in case of James T. Soutter, survivor, &c., *vs.* The La Crosse & Milwaukee Railroad Co. and others, ordered paid by the court on check No. 19 of the circuit court of the United States, dist. of Wis.

FRANCIS BLOODGOOD.

5-cent revenue stamp.

722 $4,620 60. MILWAUKEE, *January* 23, 1866.

Received of Marshall & Ilsley four thousand six hundred and twenty dollars and sixty cents on coupons presented by me, and ordered to be paid in the case of James T. Soutter, survivor, &c., *vs.* The La Crosse & Milwaukee Railroad Company and others, on check No. 20 of U. S. circuit court, district of Wisconsin.

JOHN JOHNSTON.

5-cent revenue stamp.

$1,573 56. MILWAUKEE, *January* 25, 1866.

Received of Marshall & Ilsley one thousand five hundred and seventy-three dollars and fifty-six cents on coupons presented by me, and ordered to be paid in the case of James T. Soutter, survivor, &c., *vs.* The La Crosse & Milwaukee Railroad Company and others, on check No. 21 of the U. S. circuit court, district of Wisconsin.

W. G. FITCH.

5-cent revenue stamp.

$6,294 24. MILWAUKEE, *February* 2, 1866.

Received of Marshall & Ilsley six thousand two hundred and ninety-four dollars and twenty-four cents on coupons presented by me,

and ordered to be paid in the case of James T. Soutter, survivor, &c., *vs.* The La Crosse & Milwaukee Railroad Company and others, on check No. 31 of U. S. circuit court, dist. of Wis.

A. CARY.

5-cent revenue stamp.

$481 83. MILWAUKEE, *February*, 12, 1866.

Received of Marshall & Ilsley four hundred and eighty-one dollars and eighty-three cents on coupons presented by me, and ordered to be paid in the cause of James T. Soutter, survivor, &c. *vs.* The La Crosse & Milwaukee Railroad Company and others, on check No. 32 of the U. S. circuit court, dist. of Wis.

A. CARY.

5-cent revenue stamp.

723 $42 69. MILWAUKEE, *February* 21, 1866.

Received of Marshal & Ilsley forty-two dollars and sixty-nine cents for one coupon of bond No. 440, 2d mortgage, in the case of James T. Soutter, survivor, &c., *vs.* The La Crosse & Milwaukee Railroad Company and others, ordered paid by the court, on check No. 33 of the circuit court of the U. S., dist. of Wisconsin.

A. CARY.

[5-cent revenue stamp.]

$1,049 04. MILWAUKEE, *February* 27, 1866.

Received of Marshall & Ilsley one thousand and forty-nine dollars and four cents on coupons presented by me, and ordered to be paid in the cause of James T. Soutter, survivor, &c., *vs.* The La Crosse & Milwaukee Railroad Company and others, on check No. 34 of U. S. circuit court, dist. of Wis.

C. F. LOOMIS.

[5-cent revenue stamp.]

And the Milwaukee & St. Paul Railway Company and Soutter & Knapp, to maintain the issue on their part introduced and read in evidence on the hearing the following depositions, to wit:

724 United States, circuit court, district Wisconsin, in chancery.

THE MILWAUKEE & MINNESOTA RAILROAD Company *vs.* JAMES T. SOUTTER *et. al.* } Suit by supplemental bill.

JAMES T. SOUTTER *et. al*, survivor. *vs.* MILWAUKEE & MINNESOTA RAILROAD CO. } Cross bill.

*Before Francis Bloodgood, examiner in chancery.*

The depositions of Byron Kilbourn, on behalf of the defendants in the supplemental bill, and the complainants in the cross bill, taken before said examiner at his office, in the city of Milwaukee, April 13th, 1866.

Present, on behalf of the defendants in the supplemental bill, and

the complainants in the cross bill, Jno. W. Cary, esq., of counsel, on behalf of the complainants in the sup'l bill, and of the defendants in the cross bill, Matt. H. Carpenter, esq.

Byron Kilbourn, being first duly sworn, says: I was connected with the La Crosse & Milwaukee R. R. Co., from its organization up to January, 1858. At the organization of the company I was a director; I was elected president of the company in Feb., 1856, and remained president until January, 1858. I was, during my whole connection with it, active in its business, and conversant with its affairs.

Ques. Was the rolling stock that was purchased and placed upon that road during the time you were connected with it purchased for or assigned to any particular division of said road, or was it purchased for the whole road as an entirety? State fully.

(Objected to by the Milwaukee & Minnesota Company as irrelevant and immaterial.)

Answer. It was purchased for the whole road. I never knew of any being purchased for the divisions; none of it was ever as-
725 signed to one division as against another that I am aware of.

Ques. In the several mortgages that were executed by the company mortgaging the road, or parts of the road together with all the rolling stock procured for or used on the road or parts of the road mortgaged, what rolling stock was it that was referred to?

(Objected to as above, and as incompetent to explain a written instrument by parol.)

Answ. It might be proper explanatory to say, the first mortgage was on eastern division, and all the rolling stock was then used on the eastern division, but as the road was extended, they extended the rolling stock on to it. The mortgages explain that for themselves; they embraced the road and rolling stock then owned by the company, and, according to my recollection, they embraced the road and rolling stock thereafter to be purchased. My impression is that each mortgage referred to all the rolling stock then owned by the company, the mortgage is evidence of that.

Ques. Was there ever any division of the rolling stock that was purchased and owned by the La Crosse Company for any purpose whatever, or was it always treated as a whole or entirely by the company?

(Objected to as above.)

Answer. I am not aware of any division having been made; my opinion is, without time for reflection, that it was always held as an entirety, the property of the company.

Ques. Did the company keep any separate accounts of the proceeds or funds arising from the sale of the bonds of the different mortgages; or did it all go into one common fund or treasury?

(Objected as above.)

Answ. I was not in the accounting department, and am not able to state what heads the accounts were kept under; but I remember there was an attempt made to keep separate accounts of farm mortgages, and whether there was under the heads of the other mortgages I don't know.

726 Ques. Do you recollect the giving of that mortgage?

(Handing the witness the mortgage dated Sept'r 4, 1857, to Bronson, Soutter, and Knapp, filed in court Feb. 5, 1861.)

Answ. I do.

Ques. State how and under what circumstances, and for what purpose said mortgage was executed by said company.

Answ. I am not able to give you definitely the circumstances that existed at that time, or reasons for giving that mortgage. The thing is so long gone by, I could not undertake to give them.

Ques. Have you any recollection on this subject you can give?

Answ. No; I have not. If I should answer the question, it would be simply from the transaction, the necessities of the company, and the advice of counsel that it was necessary to give it, and not from a recollection of the facts and circumstances.

Ques. Did Vose, Ludington & Co., who were largest holders of the bonds, request that this mortgage should be given? and did their counsel, Mr. Butler, prepare the mortgage at their request?

Answ. I cannot state; I cannot say who drew up the mortgage, or at whose suggestion it was given.

Ques. Was this mortgage executed by the co. in good faith for the purpose of further securing the land grant bonds, or was the object of the co. in executing it to cheat and defraud their creditors, and particularly Vose, Livingston & Co.?

(Objected to as incompetent, as calling for conclusions and results, and not for facts.)

Answ. I can't answer as to what the motives of the co. as a corporation were; but, so far as my official act in executing the mortgage was concerned, it was done in good faith and for the purposes expressed in the mortgage.

Ques. Do you recollect that you came from New York, and brought the prepared mortgage with you, and presented the matter to the board and the reasons for executing the mortgage?

727 Answ. I do not remember the fact. I don't remember whether that was the fact or not.

Ques. Were you staying in N. Y. nearly all the time?

Answ. I was there and back and forth a good part of the season that time; spent a good deal of the time in N. Y.

Ques. If you made any statement to the board relative to the object of the giving of the mortgage, did you at the time state the true reasons for giving it?

(Objected to as incompetent, the witness having stated that he did not recollect whether he had stated anything or not.)

Answ. If I did make any statement upon that subject, I made a true one undoubtedly.

Ques. Do you recollect that at the time this mortgage was given there was a doubt as to whether a railroad co. could mortgage after-acquired property or future acquisitions?

(Objected to as above.)

Answ. I do not remember that that question was mentioned, or that there was a doubt raised upon the subject. It may have been

a subject of a great deal of discussion; but if it was, it has passed out of my recollection.

Ques. Did the La Crosse co. ever purchase or place upon its road any rolling stock subsequent to the 4th day of Sept., 1857? and if any, how much and to what extent?

Answ. I don't know the dates at which they purchased their rolling stock; I can't say whether they did or not; I could not give even an expression of an opinion.

Cross-examination:

Ques. What was the financial condition of the La Crosse co. in the fall of 1857, in the month of Sept., 1857?

(Objected to irrelevant and immaterial.)

728 Answ. In that month we supposed it good, and hoped to bring it about so. Bnt we knew we were subject to some embarrassments.

Ques. Did the co. in that month execute and deliver to Selah Chamberlain a lease of all its railroad and other property consented therewith?

(Objected to as before.)

Ans. It did make a lease (I think it was in the month of Sept., 1857) of the road to Mr. Chamberlain. The lease explains itself; I cannot remember what it did contain or stipulate.

(NOTE.—By stipulation a copy of said lease is to be hereto annexed, marked Exhibit No. one, subject to objections as to its relevancy.)

Ques. Did the co., about the same time, make a lease of the Watertown division of said road, so-called, to D. C. Freeman?

(Objected to as above.)

Answ. It did.

(NOTE.—By stipulation a copy of said last lease is hereto annexed, marked Exhibit No. two, subject to objections as to its relevancy.)

Ques. Did the co. soon after the lease to Chamberlain confess a judg't to him for over $600,000?

(Objected to as above.)

Answ. I don't recollect the fact as to the confession of the judg't.

Ques. Were not there several leases given, among other things, for the purpose of enabling the co. to apply the earnings of the finished portion of the road to its completion?

(Objected to as before.)

Answ. My impression is, and it is very clearly to that, that was the case, to avail themselves of the earnings of the road to its completion.

Ques. Was not the co. about that time threatened with legal proceedings by its creditors, which the co. feared would prevent its completing the road without making those leases?

(Objected to as before.)

729 Answ. I will answer in brief that I am not aware that there was any threatening creditors of the co. except Newcomb Cleveland, a contractor, who asserted a claim against

the co. to a large amount, which the board of directors resisted as illegal and unjust against the co.; but the embarrassments of the co. did not arise mainly from this source, but were mainly attributable to attacks upon its credits made by prominent citizens of Milwaukee, through a newspaper called the American, which daily teemed with editorials attacking the credit of the co., and those daily issues sent in large numbers to New York, consigned to the managers and agents of the Milwaukee and Mississippi co., and by them distributed to brokers and others to discredit the co.

(NOTE.—The parties hereto stipulate that the annexed testimony of said Kilbourn, marked Exhibit No. 3, shall be held and considered to be testimony taken in this cause, and may read on the hearing of this cause, subject to all objections as to its relevancy and materiality. This stipulation is made simply to obviate the necessity of taking the testimony over, but in nowise to admit the record of the Cleveland suit in evidence.)

Ques. At the time this mortgage was executed, dated Sept. 4th, 1857, was Bronson, Soutter, or Knapp in Milwaukee?

(Objected to as above.)

Answ. No.

Ques. Did either of them ever, to your knowledge, request said co. to execute said mortgage?

(Objected to as before.)

Answ. No.

Ques. Was not this mortgage given with a view to protect the iron then on hand and not laid down, so that the same could be used by said co. and the completion of its road?

(Objected to as before.)

Answ. In answer to that I should state that I am not able
730 to say at this distance of time what motive may have been the governing one of the co.; but my impression is, that the controlling consideration was to protect the bondholders.

Ques. Did any one of the bondholders, to your knowledge, request the execution of this mortgage?

(Objected to as before.)

Answ. I have no recollection of a circumstance of that kind.

Ques. Was that mortgage ever, to your knowledge, delivered, to Bronson, Soutter, or Knapp prior to the year 1859?

(Objected to as before.)

Answ. I have no distinct recollection as to the time of its delivery, or that it ever was delivered.

BYRON KILBOURN.

Sworn and subscribed to before me, this 13th April, 1866.

FRANCIS BLOODGOOD,
*Exam., &c.,*

*Exhibit No.* 1.

F. B., *Exam'r.*

LEASE.

The La Crosse and Milwaukee Railroad Company to Selah Chamberlain:

Articles of agreement made and entered into by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland and State of Ohio, party of the second part, at the city of Milwaukee and State of Wisconsin, the 26th day of Sept'r, in the year of our Lord one thousand eight hundred and fifty-seven:

The said party of the first part, in consideraton of the undertakings and agreements of the said party of the second part, hereinafter contained, hereby sells and conveys to the said party of the second part all its personal property of every name, kind, and description in the State of Wisconsin, except all such personal property as is
731 used in and is appurtenant to the operation of the Watertown division of the La Crosse and Milwaukee railroad, of which said property an inventory and schedule shall be made and attached hereto, so soon as the same can be conveniently done.

And the said party of the first part, in consideration of the said undertakings of the said party of the second part, hereby leases and lets to the said party of the second part, from and after the 30th day of Sept'r, in the year 1857, for an indefinite term of time, to be determined in the manner hereinafter specified, its entire railroad and railroad route from the city of Milwaukee, by way of Horicon and Portage City to the city of La Crosse, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description connected therewith or appurtenant thereto, together with all estate, rights, privileges, and appurtenances and franchises connected therewith, or belonging or incident thereto, subject only to such prior superior liens as may or do exist thereon, and all existing contracts or agreements with any other company whose railroad connects with the La Crosse and Milwaukee railroad.

It is mutually agreed that the said party of the second part shall, from and after the said 30th day of September, and until this agreement shall be terminated in the manner hereinafter provided, operate so much of the said railroad as is ready for operation, and from time to time such portions of the same as shall be made ready for operation, in such manner as will produce the largest amount of net receipts; that the said party of the second part shall, during the term aforesaid, keep the said road and all the rolling stock upon the same in good and thorough repair, and that the said party of the second part shall receive and appropriate, in the manner hereinafter provided, all the receipts or incomes to be derived from the
732 operation of said railroad.

It is further mutually agreed that the said party of the second part may, if it shall be found for the interest of said company, buy additional rolling stock, and appropriate the receipts of said railroad to the payment of the same. The said party of the second part hereby undertakes and agrees that he will defray all the current cost and expenses of keeping said railroad and rolling stock in good and thorough repair, and all the cost and expenses of operating the said railroad, and that he will, by the 15th day of every month, make out and deliver to said party of the first part a correct statement exhibiting the total receipts and income of said railroad from all sources during the next preceding month; also the cost and expenses during such month of rolling stock purchased, and of keeping said railroad and rolling stock in repair, and the cost and expenses of operating said railroad; and also exhibiting the net receipts from said railroad, after deducting such costs and expenses of rolling stock and repairs, and of operating, and that he will at at any time, on demand of said company or its president or secretary, furnish to the person demanding the same a statement in detail of the items of which such statement is composed, and any officer or agent of said company, authorized by said company to do so, shall at any time have the right to examine the accounts of said party of the second part, relating to the repairs of said railroad and rolling stock, and to the operating of said railroad.

And the said party of the second part further undertakes and agrees that the said net receipts, after deducting the cost and expenses of repairs and operating as exhibited by the said monthly statements as aforesaid, shall be appropriated by him in the manner following, to wit:

1. To the payment of all coupons hereinafter to become due upon nine hundred and fifty thousand dollars of the bonds of said company, secured by a first mortgage or deed of trust of said railroad from Milwaukee to Portage City, bearing date June 13th, A. D. 1854,
733 together with the sinking fund provided for by a supplemental mortgage or deed of trust, bearing date Feb. 18, 1856, except such of said coupons as are payable November 1st, 1857, and the sinking fund of twelve thousand dollars, payable November 1st, 1857.

2. To the payment of all coupons hereafter to become due on one hundred and fourteen thousand dollars of bonds of the city of Milwaukee, issued to the Milwaukee, Fond du Lac, and Green Bay Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date on the 1st day of September, A. D. 1853.

3. To the payment of all coupons hereafter to become due on two hundred thousand dollars of the bonds of the city of Milwaukee, issued to the La Crosse and Milwaukee Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date the 30th day of July, A. D. 1854.

4. To the payment of all coupons hereafter to become due on one million of dollars of the bonds of the said railroad co. secured by

mortgage or deed of trust on the railroad of said co. from Milwaukee to Portage City, and from Watertown to Midland, bearing date the day of , A. D. 1857.

5. Whatever balance of said net receipts as aforesaid shall remain after the payment of the said coupons and sinking fund shall be applied by said party of the second part, on payment of the amount due or hereafter to become due to him by virtue either of a certain contract between said parties, dated January twentieth, 1857; a supplemental contract between said parties, dated April 30th, 1857; or a certain contract between said parties, dated November 20th, 1856, or of a contract modifying said contract, entered into between the said parties simultaneously with this contract, except such as may become due for work which shall be hereafter done between New Lisbon and La Crosse, which is to be paid for from the means of the said company other than the same income.

And the said party of the second part further undertakes
734 and agrees that whenever he shall have received from the earnings of the said railroad such sums as by the terms and conditions of the aforesaid contract for the construction of the said railroad, bearing date respectively November 20th, 1856, January 20th, 1857, April 30th, 1857, and the one entered into simultaneously herewith, he is or shall be entitled to receive, or whenever at any time the said party of the first part shall pay to him any balance which at such time he shall be entitled to receive, according to the terms and conditions of the said contract, that he will surrender up to the said party of the first part the quiet and peaceable possession of the whole and every part of the said railroad, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description connected therewith or appertaining thereto, in good repair, together with all estate, right, privileges, franchises, and appurtenances connected therewith or belonging or incidental thereto, including all the railroad buildings, tenements, fixtures, and appurtenances constructed, and all rolling stock, and other personal property put upon said road by said party of the second part by virtue of this contract, and that he will reconvey and deliver to said party of the first part all personal property hereby conveyed which shall not have been worn out, destroyed, or consumed in the construction or operation of the said railroad, and that he will convey and deliver to said party of the first part all personal property which shall have been acquired for said railroad in pursuance of this contract, or with the means derived from the receipts from said railroad, and that he will at such time deliver on the line of said railroad to said party of the first part fifteen thousand cords of wood, and that whenever the said party of the second part shall have received as aforesaid such sum as he shall be entitled to, as aforesaid, or whenever such balance shall be paid as aforesaid, this contract shall cease and determine, and from thenceforth it shall be null and void.

In witness whereof the said party of the first part hath caused these presents to be signed by its president and secretary, and

735 its corporate seal to be hereunto affixed, and the same are signed by the said party of the second party.

La Crosse and Milwaukee Railroad Company.

(Signed) By BYRON KILBOURN, *President.*
[L. S.] JACKSON HADLEY, *Secretary.*
[L. S.] S. CHAMBERLAIN.

Signed, sealed, and delivered in the presence of—
H. L. PALMER.
THOMAS W. BEAVER.

STATE OF WISCONSIN, *Milwaukee County, ss:*

Be it remembered, that on this 26th day of September, in the year one thousand eight hundred and fifty-seven, before the subscriber, a notary public residing in the city of Milwaukee, personally appeared Byron Kilbourn, to me known, who being by me duly sworn, said that he resides in the city of Milwaukee, Wisconsin, that he is the president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the annexed instrument is the common and corporate seal of said company, and was affixed thereto by their authority; and that he as president and Jackson Hadley as secretary subscribed their names thereto by like authority; and on the same day before me personally appeared Selah Chamberlain, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same freely for the uses and purposes therein mentioned.

(Signed) H. L. PALMER,
*Notary Public, Milwaukee County.*

(Copy.)

*Exhibit No.* 2.

Referred to in B. Kilbourn's dep.

F. BLOODGOOD, *Exam'r.*

Articles of agreement made and entered into by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and D. C. Freeman, of the city of Milwaukee and State of Wisconsin, party of the second part,
836 on this thirteenth day of September, 1857, witnesseth:

That the said party of first part, in consideration of the undertakings and agreements of the said party of the second part hereinafter contained, hereby sells and conveys to the said party of the second part all its personal property, of every name, kind, and description, in the State of Wisconsin, used in and appurtenant to the operation of the Watertown division of the La Crosse and Milwaukee railroad, of which said property an inventory and schedule shall be made and attached hereto as soon as the same can be conveniently done.

And the said party of the first part, in consideration of the undertakings and agreements of the said party of the second part hereinafter contained, does hereby demise, lease, and let unto the said party of the second part, from and after the date of these presents, for the full term of one year then next ensuing, as hereinafter provided, its entire railroad and railroad route from the city of Milwaukee by the way of Watertown and Columbus to Midland, in the county of Columbia, and commonly called and known as the Watertown division of the La Crosse and Milwaukee Railroad Company, together with its right of way, depot grounds, and all buildings, tenements, and fixtures, of whatever kind or description, connected therewith or appurtenant thereto, together with all estate, rights, privileges, franchises, and appurtenances connected therewith or belonging or incident thereto, subject only to such prior or superior liens as may or do exist thereon, and all existing contracts or agreements with any other company whose railroad connects with the said Watertown division of the La Crosse and Milwaukee railroad.

It is mutually agreed that the said party of the second part shall, from and after the date of these presents and until the expiration or other determination of this lease as herein provided, operate so much of the said railroad hereby leased as is ready for operation, and from time to time such other portions of the said road as may be
737 ready for operation, in such manner as will produce the largest amount of net receipts.

That the said party of the second part shall, during the time aforesaid, keep the said road hereby leased and all the rolling stock upon the same in good and thorough order, (U), repair, (R,) and that the said party of the second part shall receive and appropriate, in the manner hereinafter provided, all the receipts or income to be derived from the operation of said railroad.

And it is further mutually agreed that the said party of the second may, if it shall be found for the interest of the said company, and with the consent of said company, purchase additional rolling stock, and appropriate the receipts of the said railroad to the payment to be made therefor.

The said party of the second part undertakes and agrees that he will defray all the current costs and expenses of keeping said railroad and rolling stock in good and thorough repair, and all the costs and expenses of operating the said railroad, and that he will, by the 15th day of each and every month, make out and deliver to the said party of the first part a correct statement exhibiting the total amount of receipts and income of the said railroad from all sources during the next preceding month; also the costs and expenses during such month of rolling stock purchased and of keeping said railroad and rolling stock in repair, and the costs and expenses of operating said railroad, and also exhibiting the net receipts from said railroad after deducting such costs and expenses of rolling stock and repairs and of operating the said road; and that he will at any time, on demand of the said company or its president or secretary, furnish to the person demanding the same a statement in detail of the items of which such

statement is composed, and any officer or agent of the said company, authorized by said company to do so, shall at any time have the right to examine the accounts of the said party of the second part relating to the repair of said railroad and rolling stock and to the operating of said railroad and to the earnings and expenses thereof generally.

738 And the said party of the second part further undertakes and agrees that the said net receipts, after deducting the costs and expenses of the repairs and operating the said railroad as exhibited by the said monthly statement as aforesaid, shall be appropriated by him in the manner following, to wit:

First. To the payment of all coupons hereafter to become due upon three hundred and ten thousand dollars of the bonds of the said company, secured by a first mortgage or deed of trust of said railroad from the junction to the city of Watertown, bearing date Aug. 1, 1853.

Second. To the payment of all coupons hereafter to become due on two hundred thousand dollars of bonds of the city of Milwaukee, issued to the Milwaukee and Watertown Railroad Company, secured by a second mortgage or mortgages on the road from the junction to Columbus.

Third. To the payment of all coupons hereafter to become due on one hundred and eighteen thousand dollars of bonds of the said company, secured by a third mortgage or deed of trust of said railroad, from the junction to the city of Watertown, bearing date the 1st day of February, A. D. 1856.

Fourth. Whatever balance of said net receipts as aforesaid shall remain after the payment of said coupons shall be applied by the party of the second part in pay't of the am't due, or to become due, to Messrs. Hill & Rudd, on their contrrct with the La Crosse and Milwaukee Railroad Company, dated 30th June, A. D. 1857, for the erection of depot buildings for said company in the city of Milwaukee.

Fifth. And whatever balance of said net receipts as aforesaid, shall remain, after making all the payments aforesaid, shall be applied by the said party of the second part to the payment of whatever sum shall be due or become due to D. C. Jackson on his contract with the La Crosse and Milwaukee Railroad Company, dated the 22d day of January, 1857, for the construction of the

739 Portage division of the La Crosse and Milwaukee railroad, extending from Madison to Portage City, or to the point where said line shall intersect the eastern division of the said railroad.

And the said party of the second part further undertakes and agrees that whenever he shall have paid from the net earnings of the said railroad, such sums as shall be due to the said Hill & Rudd and the said D. C. Jackson on their said contract, or whenever at any time, either before or after the expiration of one year from the date hereof; the said party of the first part shall pay to said Hill & Rudd and to the said D. C. Jackson any balance which at such time they shall respectively be entitled to receive upon their said contracts, then he

will surrender up to the said party of the first part the quiet and peaceable possession of the whole and every part of the said railroad, together with its right of way and depot grounds, and all and singular the property, rights, privileges, and franchises, fixtures and appurtenances whatsoever hereby leased, or which by virtue of this lease may or shall come to the possession of the said party of the second part, in good repair, including all the rolling stock and other personal property put upon the said road by the said party of the second part by virtue of this contract; and that he will reconvey and deliver to the said party of the first part all personal property hereby conveyed which shall not have been worn out, destroyed, or consumed in the operation of the said road, and that he will convey and deliver to the said party of the first part all the personal property which shall have been acquired by the said railroad in pursuance of this contract, or with the means derived from the receipts from said railroad; and that he will at such time deliver, on the line of said railroad, to the said party of the first part, an equal quantity of wood to that now on hand for said railroad, and transferred therewith to said party of the second part by virtue of this contract. And that the said party of the second part will use and apply all the personal property hereby conveyed to him in and about the keeping in repair and operating of the said railroad, and the rolling stock, machinery, fixtures, and appurtenances belonging to or connected with the same.

740

And whenever the said party of the second part shall have paid, out of the net earnings of said road, the amount due to the said Hill & Rudd and the said D. C. Jackson in the said contract, or the same shall be otherwise paid by the said company, this lease shall cease and determine, and from thenceforth shall be null and void.

It is further stipulated and agreed that the said party of the second part shall not sell nor assign this lease, nor underlet the property hereby leased, nor any part thereof, to any other person or corporation without the consent of the said party of the first part be first obtained and indorsed on, or annexed thereto, in writing.

In witness whereof the said party of the first part has caused these presents to be subscribed by its president and secretary, and its corporate seal to be thereto affixed, and the same have been subscribed by the said party of the second part the day and year first above written.

La Crosse and Milwaukee Railroad Company,
[L. S.] By BYRON KILBOURN, *President.*
JACKSON HADLEY,
*Secretary of the Railroad Company.*

STATE OF WISCONSIN, *Milwaukee County, ss:*

Be it remembered, that on the 1st day of October, A. D. 1857, before me personally appeared Byron Kilbourn, who is personally known to me, who being by me duly sworn, says that he resides in the city of Milwaukee; that he is the president of the La Crosse and Milwaukee Railroad Company, that the seal affixed to the foregoing

instrument is the common and corporate seal of said company,
741 and was affixed thereto by their authority; and that he, as president, and Jackson Hadley, as secretary of said company, subscribed their name thereto by like authority; and on the same day before me also appeared D. C. Freeman, to me personally known to be the person who executed the foregoing instrument, and acknowledged the execution thereof for the uses and purposes therein mentioned.

*Inventory of property leased and sold to D. C. Freeman by the La Crosse and Milwaukee Railroad Company on the Watertown division of said company, as mentioned in the lease to said Freeman, dated Sept. 30th,* 1857.

Columbus station:

1 station building, 30 by 70 feet.
1 engine house, 30 by 50 feet.
1 water house, 20 by 20 feet, tank and pump.

Lowell station:

1 station house, 18 by 40 feet.
1 water house, 20 by 20 feet, tank and pump.

Watertown station:

1 station house; 1 brick building, with frame addition 28 by 180 feet.
1 frame shed opposite station house facing railroad track.
1 machine shop, 40 by 100 feet.
1 car shop, 40 by 100 feet.
1 blacksmith shop, 25 by 50 feet.
2 water houses, 18 by 30 feet, and tank.
1 old engine house, 50 by 50 feet.
1 frame wood shed, 20 by 160 feet.

Oconomowoc station:

742 1 station house, 20 by 100 feet.
1 water house, 14 by 20 feet, tank and pump.
1 wood shed, 25 by 100 feet.

Pine Lake station:

1 station house, 16 by 40 feet.

Hartland station:

1 old station house, 14 by 20 feet.

Pewaukee station:

1 station house, 20 by 20 feet.
1 wood shed, 15 by 75 feet.

Junction station:

1 station house, 26 by 35 feet, (undivided half.)

Milwaukee station:

1 engine house.

Furniture in depot at Columbus:

1 desk.
1 stove and fixtures.
1 clock.
1 pair trucks.
1 set scales.

Furniture at station at Lowell:

1 desk.
1 stove and fixtures.
1 set scales.
1 pair trucks.

Furniture at station at Watertown:

2 desks.
1 safe.
2 set trucks.
2 stoves and fixtures.
2 set scales.
1 telegraph instrument.
1 clock.

743 Furniture in station at Oconomowoc:

1 desk.
1 safe (small.)
1 telegraph instrument.
2 pair trucks.
1 set scales.
1 clock.
1 wheelbarrow.
1 stove and fixings.

Furniture in station at Pine Lake:

1 desk.
1 stove and fixtures.
1 set scales.
1 pair trucks.

Furniture in station at Hartland:

1 desk.
1 stove and fixings.
1 set scales.
1 pair trucks.

Furniture in station at Pewaukee.

1 desk.
1 stove and fixings.
1 pair trucks.
1 set scales.

Rolling stock.

67 box cars.
35 rock cars.
10 hand cars.
4 passenger cars.
2 baggage cars.

Locomotive engines:

1 engine, R. W. Fowler, (20 tons.)
1 engine, Columbus, (25 tons.)
1 engine, Hercules, (25 tons.)
1 engine, Nebraska, (25 tons.)
1 engine, Oconomowoc, (20 tons.)
1 engine, Watertown, (20 tons.)
1 engine, No. 22, (22 tons.)
744 20 dump cars.

Property in machine shop at Watertown:

1 stationary engine, boiler, and fixtures.
1 large engine chatche and tools, 16 feet bed.
1 large engine chatche and tools, 14 feet bed.
1 large engine chatche and tools, 9½ feet bed.
1 iron plainer.
1 bolt cutter.
1 upright drill.
8 heavy wrought vices.
20 feet 2 inches shafting with hangers and pullies.
100 assorted files.
1 portable forge.
2 pair platform scales.
1 Halley patent pump.
1 blower.
1 wheel press.
6 car axles.
6 French wheels, (28 inch.)
4 tender truck wheels.
10 truck wheels (33 inches)
1 lot pattern for engines.
2 barrels oil.

Property in blacksmith shop:

3 forges, fixtures and tools.
2 heavy wrought vices.
4 tons Blosburgh coal.
1 ton old scrap iron.

½ ton old engine tin.
300 lbs. bar iron.
200 lbs. bar steel.
And wood on line of road between junction and Lowell station 3,650 cords.

*Exhibit No* 3.

F. B. Exam'r.

District court of the United States for the district of Wisconsin.

745 NEWCOMB CLEVELAND
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company, Selah Chamberlain, Byron Kilbourn, and others.

(Copy.)

Depositions taken on the part of the complainants, &c., May 27, 1858.

M. H. Carpenter, of counsel for compl'ts; Mr. Butler, of counsel for def'ts, Ludington & Kneeland. and the La Crosse & Milwaukee R. R. Co.; Mr. Emmons of council for the def't Chamberlain.

Byron Kilbourn, being duly sworn for the complainants, testifies and says, (Mr. Emmons objects to the competency of this witness on account of his being a party to this suit:) I recollect something of the circumstances of the sale of the property at the mouth of the Menommonee. The first that I learned of the sale being contemplated was that I heard that Nash and Cook desired to purchase it. I had always been in favor of selling the property because the location of the depot would always be unsettled while the company owned this property, I therefore approved of the proposed sale. I first heard of Kneeland and Ludington's interest in the purchase about the time of the contract. They, too, proposed to me to take an interest in it. In addition to the property purchased of the company was some other property, I believe. I was president of the co. at the time of making the contract for building the road from Portage to La Crosse. My impresion is that the contract was made by the board. I know that certain subsequent contracts have been made modifying that contract. This was while I was president of the board.

Question. At the time these modifications were made, did you know of them or oppose them?

746 (Objected to.)

Answer. One of the modifications was made when I was not here. This was in regard to the construction of the tunnel. The date of this contract was April 30th, 1857. I think it was indorsed on the back of the other contract. The second modification extended this contract, and was made with my co-operation.

Q ies. By whom was this modification of the contract made in regard to the tunnel?

(Objected to as irrelevant, and a matter with which the plaintiff has no concern.)

Answer. I only know from the signatures to the paper. It is executed by Mr. Goodrich, vice president, on the part of company, and by Mr. Chamberlain, for himself.

Ques. Was that indorsement made on its date, or subsequently?

(Objected to for the same reason as above.)

Answer. I have no knowledge.

(Mr. Emmons objects to all inquiries and testimony on this subject.)

I saw this indorsement about the time I made my answer in this case; but I first heard of the existence of the agreement at or before my return home. I made a survey of the summit and tunnel in April. I returned to La Crosse with the chief engineer, and wrote to Mr. Goodrich to make an arrangement with Mr. Chamberlain to do the work. I transmitted the letter, with sundry verbal communications, by Mr. Woodward, the chief engineer. He returned to Milwaukee, and I went to St. Paul. Subsequently, and within three or four weeks, he joined me at Prescott, on the Mississippi river. That was about May 20, I think. I learned from him that the co. had arranged with him for the construction of the tunnel work. I speak of the modification of the contract in regard to the work.

Ques. Did Mr. Goodrich, in precise terms, &c., follow out your directions?

(Objected for the same reasons.)

747 Answer. I don't think my letter could be properly construed into directions. They were for the board to make. My letter enclosed an estimate made by me and Mr. Woodward.

Ques. How did the estimate correspond with the contract price?

(Objected to.)

Answer. I can't say I recollect generally that the contract price was higher than the estimate. I can't say how much higher. The stone was some higher, and the earth work a good deal higher. I don't remember the original estimate. My impression is that the aggregate cost by the estimate was $70,000 to $80,000. The increase of cost under the contract is owing, I suppose, as much to the increase of quantities as to the increase of prices.

Ques. Had there been, up to the time of the Chamberlain judg't, any ratification by the board of the contract made by Goodrich?

(Objected to.)

Answer. I am not aware of any action of the board subsequent to the action of the executive committee in making the contract. That is the action of the board unless repudiated by them; under our laws, I suppose, they could not repudiate an executed contract.

The executive committee consisted of myself, president, and Mr. Goodrich, vice president, ex officio, and Moses Kneeland, Sam'l Brown, and Ganet White, directors. I was present and acting in the board when the judgment was confessed in favor of Chamberlain, and when the lease was given to him. The lease was given previous to the judgment. The lease was given during the pendency of the suit with Cleveland. I think Mr. Chamberlain first proposed that the lease should be given to him as the embarrassment of the company grew more apparent. Mr. Chamberlain, of course, grew anxious

about his pay. When I went home in the early part of September, 1857, he expressed much uneasiness as to his security. He
748 urgently requested of me to make him some specific security. This was about the first of September. He explained to me, at considerable length, the danger that he might not receive his pay for the work he was then doing; that he was expending a good deal of money; had a great many men at work, and had drawn largely on his means and the means of his friends. The company was largely in arrears to him on the contract. He had heard of dissatisfaction on the part of Vose, Livingston & Co., of whom he had purchased the iron, on account of not making payments to them, and that they threatened to reclaim the iron. He wanted some assurance and security that he would receive his pay at some time, or else he would have to suspend his operations. He stated to me that he had urged this very strongly on the directors. He urged it very strenuously on me. He seemed to think he was incurring too large responsibilities on uncertainties. I told him on my part, on behalf of the company, that I thought we had financial arrangements then made by the issue of a million of second mortgage bonds by which we could pay off his estimates, and that such security would therefore not be necessary at that time. In consideration of those views, I advised against it. I told him that altho' I was willing to do anything to accommodate him, I was afraid that that would injure our credit and hinder us in raising funds. The result was that we did not go into it at that time. We gave him at that time, however, the assurance that if we should be disappointed in raising funds we would give him all the security we could; that the great point with us was the completion of the road, and that we would protect him at all times as far we could. In this he acquiesced, though urgent to the last that we should do as he desired.

As we did not see fit to do so then, his parting remark to me was,
749 that he should depend upon us to see him safe against all harm. I told him that from the prospect we then had, I thought we should be able to pay him $150,000 in the ensuing month, (September.) I left here on the fourth of September for New York. When I reached there, after an absence of about three weeks, I found that our prospects for raising funds from this source was very much diminished. I think we did not, in fact, pay him that month more than $15,000. I found, as September and October progressed, that we were getting deeper into embarrassment, and that an association of bondholders was formed around us, who were thwarting all our efforts, and I saw but one way to save the road and secure its ultimate completion, which was to make this lease to Mr. Chamberlain. When I became fully convinced of this I returned home for this purpose. I had a great amount of anxious reflection, and came fully to this conclusion. I laid views before the board, who had come to the same conclusion before, and we went on and made the lease at the time, and in the manner that the records show.

Ques. What dangers did you propose to guard against by giving the lease?

Answer. I have already explained that fears were entertained of com-

bination of bondholders being formed sufficiently strong to counteract our efforts in raising money to meet our liabilities and progress with the work, and that dangers of this had became so imminent, and was growing so apparent, that the only remaining hope for the continuance of work on the road seemed to be to give Mr. Chamberlain such a lien upon it as would insure the payment of what had already become due for work then done, as well as for that to be done under this contract. This was the great and paramount danger which threatened to overwhelm the company, but there were other and nearer dangers threatening us more immediately, against which it was equally necessary to guard. There had been one or
750 two instances of attachment sued against the company for indebtedness to the amount of a few hundred dollars; and it seemed quite evident that by such means the Company's resources would be so exhausted as to render it entirely powerless for further progress.

The floating debts of the company amounted to perhaps some $300,000 in small sums, varying from a few dollars to some hundreds, and in some cases to a few thousands. If sued under attachment, under the influences of panics, as no doubt they would have been, would effectually arrested the progress of the work and prevented the completion of the road. These were the dangers against which the board felt it to be its duty to guard by every lawful means in its power.

Ques. When you represented the dangers to the directors on your return, what dangers did you state, and how did you propose, through the lease, to guard against them?

Answer. This question is substantially answered by the foregoing answer. The board of directors fully comprehended the embarrassments of the items and the dangers which threatened a suspension of work on the road without being communicated by me, and some of the directors had been anxious, as a safeguard to the company, to make the necessary liens at a much earlier period, and doubtless would have authorized it to be done in the latter part of August or the first of September, except for reasons assigned by me against it at the time.

Ques. At the time of giving the lease, was the amount of indebtedness to Chamberlain known?

Answer. No.

Ques. At the time, was it agreed that judgment should thereafter be confessed?

Ans. I do not think there was any distinct agreement that a judgment would be confessed by the company for the amount due Chamberlain at the time of making out of the lease, but it was the
751 intent of the company to give him a perfect lien upon the road and its earnings to secure all indebtedness past and accruing under his contract until the whole should be paid, and such was one of the conditions of the lease without reference to the specific amount.

Ques. Why did you not wait, before giving the lease, until you had ascertained the indebtedness?

Answer. Because the amount of indebtedness at that, or any other particular time, was not a necessary element in the lease.

Ques. When did you first agree to give a judgment to Chamberlain, and why did you conclude to give it?

Answer. There was no agreement, properly so speaking, to give Mr. Chamberlain a judgment except the order made for that purpose by the board. This was on the day and at the time when the papers for that purpose were made out, which date I do not remember, but it can be ascertained by reference to those papers. The reason why this order was made I understood to be in consequence of a doubt entertained by the counsel of Mr. Chamberlain, whether some legal difficulties might not be raised as to his lease lien, covering the iron not laid down on the road, and to avoid all questions in this respect, and, in fact, to render the transaction, as regarded a lien, as perfect as possible, and thereby accomplish the ends proposed to be secured by it, it was deemed advisable by the board, under advice of counsel, to give the force of a judgment in support of the previous lien for the amount then reported to be due.

Ques. Had you then ascertained the indebtedness, and how? Have you not stated that it was not then ascertained?

Answer. At the time of giving the judgment the amount due Chamberlain had been ascertained by the report from the chief engineer, Mr. E. W. Woodward, whose statement was considered
752 conclusive by the company. I have never stated that the amount then due was not then ascertained. The question is propounded as I understand, in consequence of a statement made by Mr. Cleveland, the complainant in this pending suit, before the late committee of investigation of the legislature and to his counsel. In this statement, Mr. Cleveland has fallen into several mistakes, the most essential of which is in relation to the matter of this question, and is as follows, p. 123: "Chamberlain, he [Kilbourn] said, took the lease and was gone into the country some two days, then returned and told him (Kilbourn) that he, Kilbourn, had made the lease to him to prevent Cleveland from getting possession of the road; that he had consulted with his counsel, and they had advised him that the lease would not prevent Cleveland, or any other judg't creditor, from getting possession of the road unless they fixed up a judg't of some kind in his, Chamberlain's, favor, and then (as Mr. Kilbourn then told me) the company confessed judgment to Chamberlain without their knowing how much they owed him, to cover whatever it was when they found out. They had not then got their estimates, but that he had not, at the time, any idea that the company owed Chamberlain any such amount as the judgment." In this statement, Mr. Cleveland's mind was in a singular state of confusion. He represents me as stating to him that Mr Chamberlain went into the country and, after two days, returned, made certain communications to me of insufficiency of lien under his lease, &c. The fact was, Mr. Cleveland told me that he had understood such to be the fact, and asked me if it were not so. This is not very material, except as showing the animus of his testimony on that occasion, and may explain the material errors into

which he falls in the latter part of his statement. I never stated to him "that the company confessed the judgment to Chamberlain without knowing how much they owed him." The amount had been ascertained before the judgment was confessed, and I so stated to Mr. Cleveland, clearly and distinctly, in the conversation to which he alludes. He evidently got confused in his mind the statement to that effect in reference to the lease, and applied it to the judg-
753 ment.

The foregoing questions and answers were objected to by Mr. Emmons because Mr. Chamberlain is not connected with the motives of the company, nor affected with notice thereof.)

Ques. Was Mr. Cleveland's claim included among those impending in view of the board?

(Objected to.)

Answer. It was, I think, in common with others. No such exclusiveness, however, was given to it as Mr. Cleveland states in his testimony before the investigating committee. I don't think Cleveland's impending judgment had any particular influence at that time. I can't answer for the rest of the board. The New York reasons had much the most influence on my own mind. I can't say that the matter was hastened by the pending claim of Cleveland. I don't know that it was. It was rather a hurrying time with us; other matters were pressing. I was only temporarily here, and in a hurry to get back to New York. My present impression is that Mr. Chamberlain first suggested the judgment to me. It was founded on the opinion of his own counsel. It had particular reference to the iron which Vose, Livingston & Co were endeavoring to reclaim, he understood. I had simply one idea, to secure the road. I, wanted, first to secure the completion of the road; second, to protect the Wisconsin stockholders. These were the paramount considerations in my mind. Next, my desire was to secure Mr. Chamberlain. This is the order of motive in my mind. I supposed Mr. Chamberlain's would be classed differently. He wanted, I suppose, first to secure himself. In order to secure these objects I deemed it certainly necessary to have the lease and the judgment before Cleveland should get a judgment. Doubtless I explained my general views to the board. How far I mentioned them in detail I can't say. I can't say precisely what motives may have influenced them. Mr. Cleveland's claim may have been mentioned in the conversation between him (Chamberlain) and me. There were some attachments then, and there was fear of more attachments every day. They would have hastened our operations without Mr. Cleveland's claim. Mr. Cleveland's claim may have been spoken of between me and Mr. Chamberlain, but not in the way Mr. Cleveland has stated, or I should remember
754 it. I would not then have admitted to anybody that these motives influenced us to make the lease and confess the judgment. No such view was presented between us. The iron was to be devoted to the use of the road, and Mr. Chamberlain was to have the use of the road to secure him. The lease shows all this. There was nothing said between Chamberlain and me, I think, as to

whether the iron was to be sold for his benefit or laid on the road. I understood the agreement to be that the iron was to be laid on the road and secured to the road for that purpose. This I understood as previously provided for in the lease. This was the scope and object of the arrangement with Chamberlain, I understood. I don't remember by whom the first lease was drawn; I presume by Mr. Steney or Mr. Palmer. Mr. Chamberlain did not tell me, after the execution of his lease, whether he was satisfied. I suppose he thought it was sufficient. I don't think he stated to me what attorney advised him that a judgment was necessary. It was within a short time—two or three days—after the lease was executed that the judgment was entered; the lease was executed within a month after I heard of it. Mr. Chamberlain proposed the lease by way of security, or to have control of the road—to have the revenues of the road under his control. This he wanted before the 4th Sept'r, when I went to New York. He wanted a mortgage on the revenues of the road, possesssion of them, or a lien of them, until he should get his pay. After my return, the papers were executed, as soon as they could be made, without any delay—in two or three days I presume. I think we directed Mr. Woodward to make an estimate of the amount due Chamberlain before the lease was made, but that he had not had time to make it when the lease was made. As far as the lease was concerned, I considered the amount of indebtedness of no consequence, and I think nothing had been said about a judgment. Other members of the board may have spoken about a judgment. I speak only of what I know myself. Most of the conversations, I think, were between other members of the board and Chamberlain. I was away a good deal, and he was in constant intercourse with other members
755 of the board. Most of my impressions may be rather the result of conferences than of any conversations held by me. I have been an engineer and practically acquainted with railroads.

Ques. How long would it take a chief engineer to make the surveys and estimates necessary to determine the am't of the work that was settled by the judgment to Chamberlain?

(Withdrawn.)

I left the business at home in the hands of Mr. Goodrich and Mr. Kneeland. I was away from home a good deal, and attended to the business away from home mostly.

Ques. Do you know, or have you any grounds for believing, and if so, what are such grounds, that Mr. Goodrich, or Mr. Kneeland, or any other director of the company, had any interest in any contract between Mr. Chamberlain and the company, or in the profits or proceeds of any contract?

(Objected to as incompetent; 2ndly, that it calls for incompetent evidence; 3rdly, that it calls for immaterial and irrelevant evidence; 4thly, that it is a supremely impudent question for the complainant in this suit to put in the mouth of his counsel.)

Answer. I have no knowledge of any such interest, and I have no grounds for believing that any such interest exists.

Cross-examined by Mr. Emmons:

Question. In what you have stated to be your motives in making the lease (so-called) and the confession of judgment, was Mr. Chamberlain anywise privy thereto, to your knowledge, any further than an effort or a manifested design on his part to secure a bona fide debt due him from the railroad company?

Answer. I don't think I explained to him my motives; nor do I think there was any such explanation of motives between him and the company in discussing the matter of those securities; in other words, I do not think our motives were in any way made an element in the arrangement so far as anything was said to me by Mr. Chamberlain; it was evident that his motive was to secure payments for the debts due and accruing to him by the company. I allude to the term "accruing indebtedness" only to what is expressed in
756 the lease. The judgment was for a specific amount then due. I don't remember on what day the lease was executed. The chief engineer made a report of the amount due to Mr. Chamberlain, on which the board acted. I presume he had made monthly estimates. I never had any thing to do with those. The amount reported due was the basis up which the judgment was confessed. So far as I know, the amount reported was correct. If I had not supposed so, I would have been the last to sanction the arrangement. The estimate was carried to the credit of Mr. Chamberlain, and a balance struck by a deduction of previous payments, and the am't due Mr. Chamberlain thus ascertained from our books.

Re-examined:

The usage is for each assistant on each portion of the line to make up his monthly statement or estimate. I don't know whether the amount found due to Chamberlain, and for which judgment was entered, exceeded the aggregate of the previous estimates, deducting therefrom the am't previously paid. The leading object with me, and, so far as I know, with the other directors, was the completion of the road. The understanding, so far as I know, was that the contract between the company and Chamberlain was not abrogated by the lease. The judgment was not in derogation of the lease, but to carry out the objects of the lease.

Ques. Was there any understanding at the time that Mr. Chamberlain proposed that the judgment should be given to him that it should be used in any way inconsistent with the completion of the road?

Answ. No. I had heard, prior to the conversation between Mr. Chamberlain and me—ten months prior—that Vose, Ludington & Co. were going to attempt to reclaim the iron. I heard it in our office in New York. I think the commencement of that agitation was as early as the beginning of August. I don't know but sooner. Probably Mr. Chamberlain's object in proposing the judgment was not only to protect him against Vose, Ludington & Co., but also against Cleveland's claim.

Ques. Will you state whether, by virtue of the prior con-

757 tract with Mr. Chamberlain, he, upon the work being stopped, was entitled to any damages, and whether the change in the contract and the allowance of $200,000 was in good faith or a violation of the preceding right of the parties?

(Objected to by Mr. Emmons as irrelevant and immaterial, and also because the counsel for the complainant is trying to borrow a legal opinion from the witness.)

Answer. The allowance, so far as the board was concerned, I have no doubt, was made in good faith. Whether it was in violation of the right of the parties under the contract I am not able to state. He asked us $300,000, and we offered him $150,000 in consideration of his services in running the road and managing it, for which it was not expected that he would charge anything. It was after considerable discussion resolved to give him $200,000. With that he was not satisfied. He claimed that the co. had no right under the contract to suspend the work, unless they had previously complied with the contract on their part by paying up all the amounts due on it. I desire to correct the report of my testimony in this, when I answered that I deemed it necessary to have the lease and judgment before Cleveland should get a judgment. I added in connection, and by way of qualification, that I did not then expect that Cleveland was going to get a judgment, and that I had been assured by my counsel before then, and I was then and afterwards assured, that Cleveland would not get a judgment against us of any consequence, and that we should probably get a judgment against him. I think that my answer, as taken down, does not convey correctly the impression that it made or was intended to make.

Further examined by the complainants' counsel:

We did not have specific reference to Mr. Cleveland's suit in the depositions we made. That was included among the other debts.

Cross-examined:

I mean the company by "we."

Re-examined:

758 In our conversation with Chamberlain, the principal matter talked of was his security. It was also mentioned and understood that he should go on with the work.

Ques. Did not Chamberlain know at the time of this lease and judgment that your motives in part were to guard against the dangers you have spoken of to protect the interests of the company—insure the completion of the road?

Answer. I don't think I explained to Mr. Chamberlain anything about my motives in that respect. The subject discussed between him and me was the security for his benefit.

Ques. At the time of this lease and judgment, did not Chamberlain know that the Cleveland suit was on trial?

Answer. I don't know; I didn't know myself that the suit was then on trial. I don't know whether I then knew it at the time the case was made. I don't think he urged that matter as a motive. In connection with

the negotiation between Chamberlain and us, in regard to giving him these securities, I don't think the Cleveland matter was specially mentioned, but I dare say that was mentioned in connection with other matters.

(Signed) BYRON KILBOURN.

*Deposition of Hans Crocker.*

UNITED STATES OF AMERICA, *Dist. Wisconsin:*

In circuit court, in chancery.

MILWAUKEE AND MINNESOTA R. R. Co. *vs.* JAMES T. SOUTTER *et al.* } Sup'l bill.

JAMES T. SOUTTER *et al.*, survivor, *vs.* MILWAUKEE AND MINNESOTA R. R. Co. } Cross bill.

759 Before F. Bloodgood, examiner in chancery.

The depositions of Hans Crocker and Alexander Mitchell on behalf of the defendants in the supplemental bill and the complainants in the cross bill, taken before said examiner, at his office, in the city of Milwaukee, April 14, 1866. Present on behalf of the defendants in the sup'l bill and the compl's in the cross bill, Jno. W. Cary, esq., of counsel for the other parties in both suits; Matt. H. Carpenter, esq., of counsel.

Hans Crocker, being first duly sworn, says:

Ques. Were you the receiver of the La Crosse railroad from June 11, 1860, and for several years subsequent?

Answer. Yes.

Ques. Did you ever surrender possession of that road under the order of the court to the Milwaukee and St. Paul Railroad Co.? and if so, when?

Answer. I made a surrender sometime in the month of June, 1863, June 13, 1863, under the order of the 12th of June, 1863.

Ques. Did you surrender any part or portion of that railroad to the Milwaukee and St. Paul Co. prior to that time?

Answ. I never did.

Ques. Was there every any surrender by you to the St. Paul co. under the order made in the land grant case of the date of May 7th, 1863, or any joint occupation of said road or any portion thereof by you and the St. Paul co. from May 7, 1863, to June 13th of that year?

(Objected to as calling for a conclusion of law.)

Answer. I made the surrender on the 13th June, 1863; that is the first surrender I made. There never was a joint occupation.

Question. At the time the La Crosse and Milwaukee Railroad Company gave the land grant mortgage, on 31 Dec'r, 1856, what lines of

railroad did that company own and have the right to construct as one company?

(Objected to as incompetent to be proved by parol, and is irrelevant.)

Answer. They owned their own original line, and the Milwaukee and Watertown road, and from Madison to Portage, and from St. Croix to Bayfield.

760 Cross-examination:

Ques. Was the road operated between Milwaukee and La Crosse from May 7, 1863, until June 13, 1863, according to the orders of the court of May 7, 1863?

Answer. It was operated just as it had been before up to 13 June, 1863.

Question. Was the road during that time operated according to the order of the court, or not?

Answer. The road was operated just as it had been before up to the 13th June, 1863, when I gave up possession.

Ques. The court in the land grant case made an order on the 7th May, 1863, in regard to the operation of the road by you and the St. Paul co., jointly directing that the said co. and you employ all the agents and persons necessary therefor, and directing that the revenues should be paid to you, and that you should keep accounts, and that each division of the road should be entitled to its proportion of revenues, and this order remained in force, as appears by the record, until June 12, 1863. Now, during that time, was the road operated according to the command of said order? and if not, why not, and in what particular was it operated differently from the command of the order?

Answ. It was operated as it had been, but the ac's were kept between the two divisions. The ac. was kept from the 25th day of April, 1863, the day on which the road was sold. I paid the St. Paul co. for their portion of earnings from the 25th day of April to the 12th day of June, 1863, both inclusive.

Re-direct:

Question. When and how was that payment made?

Answ. I think, about the middle of June, 1863, I paid part; from the first of June to 13 June was settled in the general adjustment of the ac's. For the amount from the 25th April to the 1st May, I gave my check in the middle of June, 1863.

H. CROCKER.

Sworn to and subscribed before me, April 14, 1866.

F. BLOODGOOD, *Exam'r, &c.*

761 Alexander Mitchell, being first duly sworn, says:

I am the president of the Milwaukee and St. Paul Railway Company, and have been since July, 1865; have been a director, with

the exception of perhaps five or six months, ever since the organization of the company.

Ques. Are you now acquainted, and have you been since June last, with the financial condition of said co.?

Ans. I am.

Ques. Will you state its condition as to solvency or insolvency since the last of June to the present time?

Ans. I have always regarded it as solvent. It was for a time somewhat embarrassed by the am't of its floating debt, growing out of the fact that it had built 42 miles of new railroad, and a large elevator in Milwaukee, and had incurred other expenses, a large portion of which was in the form of floating, not funded, debt. But it was the form not the amount of the debt that caused the temporary embarrassment of the road, by a temporary failure to pay. A railroad co. may fail to pay its floating debt when due and still be perfectly solvent.

Question. Is the co. now, and for how long a time has it been, promptly meeting its liabilities?

Answer. The old floating debt has all been settled, I believe, and since I have been president the co. has given no paper that it has not promptly met.

Ques. Have they any protested paper now?

Answer. I am not aware of any; there is one small piece in suit, which we have declined to settle.

Cross-examination:

I believe there is a first mortgage on the road of $4,600,000, about that. A second mortgage of $1,500,000, about $1,000,000 of which the bonds have been sold. The remaining bonds are yet undisposed of, and there is an issue of about 130 or 140 thousand real estate bonds for the purchase of depot grounds in the city of Milwaukee. It is difficult to tell the floating debt of a company. I should say it was somewhere about $800,000 or $900,000. If that would be
762 included the supplies for the year, wood and fuel, over $200,000 of which has been bought since the 1st January last. It would also include all owing to employees. I may state that against this debt we have about $500,000 of the second mortgage bonds that we can sell, and some $70,000 of 2d mortgage eastern division bonds, and we have also sums due us by the government, and balances due from other companies which would amount in all to $40,000 or $50,000. I am not aware that the company has any property not encumbered by mortgage. I may state further that the length of the line of the road is 275 miles, and that it owns extensive depots, grounds, and docks in Milwaukee, and that last year it bought and paid for about $300,000 in value of rolling stock. That its gross earnings last year were about $2,500,000, and its expenses a little less and a million and a half. I don't know what the law is on the subject of execution. I don't know of any other property that the co. has except what I have stated.

Question. During the last year what was the am't of the indebtedness of the co., which had gone to protest, and was passed maturity?

Answer. The local floating debt in this neighborhood all matured within a period of about sixty days, and I should say that $150,000 or $200,000 went to protest, although I cannot speak with certainty. The balance of the debt was in New York.

Re-direct:

Ques. What is the amount of the capital stock of the co. aside from its bonded debt, and at what price is it selling at the stock board in New York?

Answer. In round figures the capital stock is about $4,000,000, composed of $2,300,000 in preferred and the balance common stock. The last quotation that I have seen of the sales of the stocks was 55 to 60 for preferred, and 42 for common stock. I saw this quotation in the papers yesterday or day before.

Question. In 1856 and 1857, did the line of road from Milwaukee by the way of Watertown and Columbus to Portage, so far as
763 the same was constructed, belong to and form a part of the La Crosse and Milwaukee Railroad Co.'s railroad?

(Objected to as incompetent, and calling for an opinion.)

Answer. In the fall of 1856 the Milwaukee & Watertown R. R. Co. sold their road to, and consolidated with, the La Crosse & Milwaukee R. R. Co., and the latter company completed the portion of the line then in the process of construction between Watertown and Columbus, at which point the land grant road commenced, and was to have been built by way of Portage?

Re-cross:

Ques. Did this latter road (the Milwaukee & Watertown) ever form any portion of the La Crosse and Milwaukee railroad proper?

Answ. I don't know the different charters? under which the La Crosse & Milwaukee R. R. was built; I know that the land grant was conferred upon them, and they were required to commence the land grant road at Columbus as one point.

Ques. I am not inquiring about charters, but about railroads; do you not know that the La Crosse & Milwaukee railroad, so called, was built from Milwaukee to Portage, and from Portage to La Crosse?

Answer. I am aware of the line of the road that has been built from Milwaukee to Portage, and from Portage to La Crosse.

Ques. Did the road you speak of from Watertown to Columbus ever form any portion of the line of road which you say was built from Milwaukee to Portage, and from thence to La Crosse?

Answer. It did not. The Watertown road was going to the same point, Portage, simultaneously at the time of the giving the land grant to the La Crosse co.; the two companies (the Watertown & the La Crosse) were consolidated.

ALEX. MITCHELL.

Sworn to and subscribed before me, April 14th, 1866.

F. BLOODGOOD, *Exam'r, &c.*

764 United States of America, circuit court, district Wisconsin, in chancery.

THE MILWAUKEE & MINNESOTA RAILROAD CO. *vs.* JAMES T. SOUTTER *et al.* } Suit by supplemental bill.

JAMES T. SOUTTER *et al.* survivor, *vs.* MILWAUKEE & MINNESOTA RAILROAD CO. } Cross bill.

Before Francis Bloodgood, exam'r in chancery, &c.

The deposition of H. L. Palmer on behalf of the defendants in the supplemental bill and the compl'ts in the cross bill, taken before said exam'r at his office in the city of Milwaukee, April 13, 1866.

Present, on behalf of the defendants in the supplemental bill, and the compl'ts in the cross bill, Jno. W. Cary, esq., of counsel; on behalf of the complainants in the supplemental bill, and the def'ts in the cross bill, M. H. Carpenter, esq., of counsel.

Henry L. Palmer, being first duly sworn, says:

1 was a director of the La Crosse & St. Paul Railroad Company from January or February, 1857, until June, 1858, or near June, 1858. I recollect of the giving of the mortgage of Sept. 4, 1857, to Bronson, Soutter, and Knapp. It is now shown me.

Ques. State all that you know relative to the giving of that
765 mortgage, the circumstances under which it was given, at whose request, and the purposes and objects of giving it.

Answ. It is so long since it was given that my recollection of it is very limited. The company had previously contracted with Vose, Livingston & Co. for the iron to lay the track from Portage City to La Crosse. This iron had been arriving here during the summer, and a large quantity of it lay piled upon the docks here in this city. As the fall approached the financial affairs of the country became disturbed, and railroad stocks and securities commenced depreciating. The president of the co. had spent most of the summer in New York. About the 1st Sept'r he returned to Milwaukee, and discussed with the board the financial condition of the co., and the financial prospects generally, and submitted to the board of directors a proposition to execute this mortgage. My own impression is that among other reasons given by the president for the execution of the mortgage was that Vose, Livingston & Co. desired it in order to put it beyond all doubt that the iron which they had furnished should be held under the mortgage, which secured their bonds. The iron which had been purchased from them was to be paid for, or was paid for, by the co. in bonds secured by the land grant mortgage, entirely or nearly so. I don't know but that there was a little cash; don't remember. I don't know at whose request the mortgage was given other than I have already stated. The purpose for which this mortgage was given, as far as I know, was to make it certain that the property described in the mortgage was covered by the land

grant mortgage, and was a security for the payment of the bonds issued under it. It was also one of the objects of giving the mortgage to secure the application of this iron to the completion of the road.

At the time the land grant mortgage was made, I think none of the road covered by it was built. Some survey may have been made, and some grading may have been done, but no iron was laid,
766 and I don't think there had been any grading.

At the time of the purchase of the iron from Vose, Livingston & Co., I think none of the road was built beyond Portage. There was a written contract between the co. and Vose, Livington & Co. for the purchase of that iron.

NOTE.—A copy of this contract is by stipulation to be hereto attached, marked Exhibit 1, subject to all legal objections.)

I know that Mr. Perkins, of Vose, Livington & Co., was here, and that he talked about this iron, but at what time this was I can't remember.

Ques. Was there any rolling stock purchased by the La Crosse co. subsequent to the execution of the mortgage of Sept. 4, 1857?

(Objected to as incompetent, immaterial, and irrevelant.)

Answer. I don't think there was any purchase of rolling stock made subsequent to that time; there may have been deliveries made of previously purchased stock; but I don't know about that.

Ques. Was there ever any division of the rolling stock of the La Crosse co., or assessment of it as pertaining or belonging to any one division of the road as against the other, or was it always treated by the company as an entirety?

(Objected to as irrelevant and immaterial.)

Answer. I don't know of any division of the rolling stock having been made, or of any appointment of it to the separate division of the road; so far as I remember, up to the time I left the board of directors, so much of the line of road from Milwaukee to La Crosse as was completed was operated together as one road, and the rolling stock also used upon it operated as one road; I don't know how the books were kept as to the rolling stock purchased; I know the road was divided into a number of divisions.

767 H. L. PALMER.

Sworn to and subscribed before me, April 13, 1866.

FRANCIS BLOODGOOD,
*Exam'r, &c.*

*Exhibit No.* 1.

Referred to in the deposition of H. L. Palmer.

F. BLOODGOOD,
*Examiner, &c.*

[Copy.]

Contract between the La Crosse and Milwaukee Railroad Company and Vose, Livington & Co.

NEW YORK, 3*d Dec'r*, 1856.

Memorandum of agreement between the La Crosse and Milwaukee Railroad Company and Vose, Livington & Co., of New York:

1. Vose, Livington & Co. agree to sell, and the La Crosse and Milwaukee Railroad Company agree to buy, eleven thousand (11,000) tons good merchantable quality railroad iron of the Erie pattern, weighing about fifty-eight pounds (58 lbs.) per lineal yard, at fifty-five dollars ($55) per ton of 2,240 pounds, with 2½ per cent commission. Shipments to made from Great Britain from January to July, 1857, and the iron delivered in bond at ships' side in New York.

2. Payment to be made on receipt of the bills of lading by the sellers in the first mortgage bonds of the La Crosse and Milwaukee Railroad Company at the rate of eighty cents on the dollar, which bonds are on the balance of the road, about 325 miles, and further secured by a mortgage on the lands, about one million acres, recently granted to the company. It is understood and agreed that the sellers shall be entitled to any reduction or advantage, if any, to the subscribers or purchasers of the balance of the issue of $2,500,000 bonds to be made in 1857.

768 Advances of bonds to be made to the sellers should they require them from time to time, before the receipts of bills of lading, say not to exceed at any one time (unless hereafter agreed) one hundred thousand dollars, ($100,000,) which they may call for at any time after the bonds are issued, say not earlier than the month of February, 1857. The interest that may have accrued on the bonds to the date of the bills of lading to be allowed by the sellers.

3. It is further understood and agreed that the above-mentioned bonds have the privilege attached of subscribing to (fifty) fifty per cent (say five shares) of stock in the La Crosse and Milwaukee Railroad Company for each bond of one thousand dollars received. The holders of said stock to be called upon for only five per cent. when subscribing, and no further assessments to be called upon the stock before the road is all completed, and all the lands exhausted in liquidation of the bonds.

4. The whole amount of bonds to be issued not to exceed ten million dollars, ($10,000,000,) and the amount to be issued in 1857 not to exceed two and a half million.

5. The rails to be used in the construction of the La Crosse and Milwaukee railroad between Portage City and La Crosse, and for no other purpose.

6. The sellers are not to be held responsible for delay or non-delivery of the iron caused by war or foreign enemies.

(Signed) VOSE, LIVINGSTON & CO.

La Crosse and Milwaukee R. R. Co., by—

(S'd) BYRON KILBOURN, *President.*

769 United States of America: Circuit court, district of Wisconsin, in chancery.

THE MILWAUKEE AND MINNESOTA RAILROAD Company *vs.* JAMES T. SOUTTER *et al.* } Suit by supplemental bill.

JAMES T. SOUTTER *et al.*, survivors, *vs.* THE MILWAUKEE AND MINNESOTA RAILROAD Company. } Cross bill.

Before Francis Bloodgood, examiner in chancery, &c.

The deposition of N. A. Cowdry, taken before said examiner at his office, in the city of Milwaukee, April 13th, 1866, on behalf of the defendant in the supplemental bill and the complainants in the cross bill.

Present, on behalf of complainants in the supplemental bill, and def'ts in the cross bill, M. H. Carpenter, esq., of counsel; on behalf of the defendants in sup. bill, and compl'ts in cross bill, Jno. W. Carey, esq., of counsel.

N. A. Cowdry, produced on behalf of the defendants in supplemental bill and complainant in cross bill, being duly sworn, testified as follows:

I am one of the directors of the Milwaukee & St Paul Company. That company owns of the land grant bonds, as stated in Exhibit No. 1, hereto attached.

Cross-examination by Mr. Carpenter:

Ques. About what am't of the bonds, secured by the mort-
770 gage to Bronson & Soutter, on the eastern division, are owned or controlled by the Milwaukee & St. Paul Railway Company, or its officers and directors?

(Objected to as irrelevant and immaterial.)

Ans. I have no means of knowing sufficient to answer what amount are controlled by the officers or directors in their individual capacity. Previous to January 1, 1866, the company controlled $980,000 of them, or about that am't. Soon after that the company returned the bonds to the owners. The company now own the right to pay for about sixty-six of said bonds.

Ques. To whom and in what amounts, respectively, as near as you

can state, did said co. return said bonds about the 1st of January last?

Ans. That business was transacted by a committee, and I have never examined their records. I was not a member of that committee.

Ques. Can you give some of the names? and if so, do so.

(Objected to as immaterial and irrelevant.)

Ans. I could give some of the names, but could not give the amounts accurately. It would be guessing.

Ques. Do you own any of these bonds?

Ans. I do now.

Ques. Did you in Sept. last?

Ans. Yes; twelve thousand dollars' worth, par value, and sold them about that time.

Ques. Who is the attorney in fact of Soutter, survivor, in the eastern division foreclosure case?

Ans. Russell Sage. He has been over a year.

Ques. Since he has been such attorney in fact, what counsel
771 have had charge, as counsel of that forclosure suit?

Ans. Thos. L. Ogden.

Ques. What counsel has generally argued the questions arising in that suit since Sage was att'y in fact?

(Objected to as irrelevant and immaterial.)

Ans. Mr. J. M. Carlisle, Mr. Ryan, and Mr. Cary.

Ques. Has not Mr. Cary had the chief management of that case as counsel for the complainant since that time?

Ans. I don't think Mr. Cary has had the management of the case. I think Mr. Sage has.

Ques. Who were the directors of the Milwaukee and St. Paul Railway Co. in Sept. last?

(Objected to as above.)

Ans. Alex'r Mitchell, president and director; Russell Sage, vice president and director; Selah Chamberlain, John W. Cary, N. A. Cowdry, Horace Galpin, Walter S. Garrey, David N. Hughes, Washington Hunt, Frederick P. James, S. S. Merrill, E. B. Wesley, Dan'l Wells, jr. They are directors of said co. now, and have been since the 1st July last.

Ques. Who is and has been, for the two years last past, the principal solicitor and counsel of the St. Paul co.?

Ans. John W. Cary.

Ques. Has not Mr. Cary been constantly consulted as to the proceedings which have been taken in the 2d mortgage foreclosure suit, so called, for the last two years?

(Objected to as above.)

Ans. I can't say he has been consulted constantly, but he has been frequently.

Ques. Were you in court at the time of the entry of the decree c sale and forclosure entered in Sept. last?

(Objected to as above )

Ans. I was.

772 Ques. Were not the officers and directors of the St. Paul co., so far as you know, desirous of, and assisting to procure, that decree of sale?

(Objected to as above.)

Ans. Mr. Sage undoubtedly was. I was not in the firm in which it was obtained. Went up to Mr. Cary's house at night to get him to resist it. I do not think that the other directors took any part in the matter excepting Mr. Cary himself.

Ques. Did Mr. Cary advise the solicitor, T. L. Ogden, about that decree?

(Objected to, &c.)

Ans. I think he did; I heard he did.

Ques. Have you not yourself, from time to time, consulted with Mr. Ogden in regard to the proceedings in that suit within the last two years?

(Objected to as above.)

Ans. I do not remember of consulting with him since Sept., 1864.

Ques. Do you know of your own knowledge that said company owns all the bonds, as shown in your statement Exhibit No. one?

Ans. I do.

Re-direct examination:

The negotiation of the arragement under which the St. Paul Railway Co. finally held and controlled the 980 bonds was commenced in 1861. The greater portion of these 980 they acquired but a few days before the day of the anticipated sale, Jan'y 4th, 1866, and acquired them simply for the purpose of using them for the purpose of such sale; that is, to buy the property with. This was the purpose for which the negotiation commenced in 1861.

773 N. A. COWDRY.

Sworn to and subscribed before me, 13 April, 1866.

FRANCIS BLOODGOOD,
*Exam'r in Chancery.*

*Exhibit No.* 1.

FRANCIS BLOODGOOD,
*Exam'r, &c.*

Statement of land grant bonds owned by the Mil. and St. Paul R'y Co.

The whole amount of bonds issued purporting to be secured by the land grant or Bronson Soutter and Knapp mortgage is—

| | | |
|---|---|---|
| First issue below No. 1,991 | | $1,991,000 00 |
| Second issue above No. 1,991 is 2,009,000 *a* 40 p. c. | | 803,600 00 |
| | | 2,794,600 00 |
| Of the above bonds the Mil. and St. Paul Ry. Co. own and possess of— | | |
| First issue | $1,964,000 00 | |
| Second issue, *a* 40 p. c | 795,800 00 | |
| | | 2,759,800 00 |
| Amount in hands of unknown persons | | 34,800 00 |

The said Milwaukee and St. Paul Railway Company and the said Soutter and Knapp also read in evidence on the hearing all the exhibits attached to their several answers and the supplemental bill, and it was admitted that said several exhibits were true copies of their respective originals, and were filed in the respective causes as set forth in said answers and cross bill.

They also read in evidence the order of the 12th June, 1863,
774 in the land grant case, which has been copied in this record at page 495.

They also read in evidence the mortgage and resolution attached to cross bill, copied at pages 48 to 52 of this record,

They further read in evidence an extract from the testimony of Edwin H. Goodrich, in the land grant record, as follows, to wit:

"At the date of the first mortgage there was no rolling stock on hand, June 30, 1854. At the date of the mortgage to Bronson and Soutter, August 17th, 1857, the cost of the rolling stock on hand was $544,492 16. At the date of the land grant mortgage, 31 December, 1856, the rolling stock on hand cost $455,001 06. At the date of the order of reference in these cases, (11 March, 1861,) the cost of the rolling stock on hand was $623,235 78.

"None of the rolling stock was purchased with land grant bonds, but part of it was paid for with proceeds of the land grant bonds. Out of the proceeds of those bonds, (issued under the mortgage to Bronson, Soutter, and Knapp,) three thousand dollars was paid for the right to use a car brake, and thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents were paid for forty box cars. The entire amount of rolling stock is about all on hand at this time, scarcely any having been destroyed. The whole sum paid for rolling stock out of the earnings of the road since 31 December, 1858, is $78,743 62, besides some small sums for transportation of rolling stock. Besides that, payments have been made out of the general earnings of the road for building rolling stock in the company's shops on the eastern division of the road, as per report of the receiver, made December 31, 1860."

The said Milwaukee and St. Paul Railway Company, and the said Soutter and Knapp, also read in evidence from land grant

775 record, the petition of the Milwaukee and Minnesota Railroad Company, and the exhibit thereto attached, as follows, towit:

In the district court of the United States for the district of Wisconsin, in equity.

GREEN C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp, trustees, &c., *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD Company and others. } Foreclosure suit.

To the judge of the district court aforesaid:

Humbly complaining unto your honor, your petitioner, the Milwaukee and Minnesota Railroad Company, one of the defendants to the bill of complaint in this cause, by Matt. H. Carpenter, its solicitor, respectfully represents:

That the railroad and other property mentioned and described in the final decree in this cause have been advertised for sale at public auction on the 25th day of April, A. D. 1863, by the marshal of this district, and will, as your petitioner is informed and believes, be sold in pretended pursuance of said decree at that time, unless said sale shall be stayed by order of this honorable court, or by injunction from the circuit court of the United States for this district.

Your petitioner further shows that such sale is intended to and may have the effect (if it takes place) to extinguish the rights of your petitioner to said property therein described at law and in equity; or would at least be a cloud upon the rights of your petitioner therein, and involve great expense and trouble of litigation in relation to the same, and otherwise greatly injure, oppress, and embarrass your petitioner; and that the marshal has described the railroad franchises and other property to be sold by the same description as that contained in the decree, and not otherwise.

Your petitioner further shows that it has exhibited to the judges of the circuit court of the United States for the ninth circuit and district of Wisconsin, a bill of review against said Green C.
776 Bronson, James T. Soutter, and Shepherd Knapp, as defendants, in which your petitioner prays that the final decree in this cause may be reviewed, revised, and set aside or modified for errors manifest upon the face of said decree.

Your petitioner further represents that the property, railroad franchises, and other things described in said decree, were advertised, on or about the 17th day of January, A. D. 1863, for sale by said marshal on the 25th day of April, A. D. 1863, in the name of the said district court of the United States for the district of Wisconsin, as appears from a copy thereof hereto attached and marked Exhibit No. 1; and not in the name of the circuit court of the United States for said district, as the same ought to have been advertised. And your petitioner is advised and insists that at the time said advertisement was made, and until about the 1st day of March, A. D. 1863,

the said district court had no right or authority to enforce said decree by sale, or to make said sale in pursuance of said decree, and that such advertisement was void until *until* about the 1st day of March last, when an act was passed by the Congress and approved by the President of the United States authorizing said district court to enforce said decree; and your petitioner is advised and insists that the said advertisement has not been published since said district court had authority to make sale of said property, as long as by said decree it is required to be published before a legal sale of said road can be had.

Your petioner further shows, on information and belief, that so great is the doubt among parties interested, business men, and capitalists, as to whether such sale would be legal if made on the 25th day of April under said advertisement, that nothing like its real value will be bidden for any of said property, and that the same will be sacrificed at said sale to the great damage of your petitioner and all other creditors of said La Crosse and Milwaukee Railroad Company.

Your petitioner, therefore prays your honor, sitting in said district court, to stay the said advertised sale until the said bill of review shall be heard and determined by said circuit court. And if your honor shall be of opinion that your petitioner is not entitled to such stay of said sale, then your petitioner prays your honor to make an order in said court directing said marshal to advertise said railroad and
777 other property anew in the name and under the authority of the said district court, or for such other or different order, decree, or direction as your petitioner may be entitled to.

MATT. H. CARPENTER,
*Solicitor for Milwaukee and Minnesota Railroad Company.*

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming being first duly sworn, on oath says that the above named the Milwaukee and Minnesota Railroad Company, is one of the defendants to the bill of complaint in the above-entitled cause; that he, said Fleming, is a director of said railroad company, and that Moses Kneeland, the president of said company, is confined to his house by illness, and therefore he, said Fleming, makes this verification on behalf of said company. The said Fleming further on oath says, that he has heard read and knows the contents of the foregoing petition, and that the same is true.

A. FLEMING.

Subscribed and sworn to before me, this 23d day of April, A. D. 1863.

J. M. MILLER,
*Clerk U. S. Court, Wisconsin.*

*Exhibit No 1.—U. S. Marshal's sale.*

District court of the United States, district of Wisconsin, in equity.

GREEN C. BRONSON, JAMES T. SOUTTER, and Sheperd Knapp, trustees,
*vs.*
LA CROSSE AND MILWAUKEE RAILROAD COMpany, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch. Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Broadhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthoff, Sebre Howard, Lawrence D. Graham, Donald G. Scott, the Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy, Horace Galpin, Edward Livermore,
778 William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Runi Martin, R. J. Barton, D. M. Corbit, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce and Young, John M. Taft, Jonathan P. Hopper, D. S. Kingore, Noah Sturdevant, William H. Fessenden, John L. Southerland, E. Haskett Derby, Frederick Levick, Charles Shepherd, C. P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, T. F. Bergen, John J. Vanderbilt, G. S. Boardman, and John Nicholson.

In pursuance and by virtue of a decree made by the district court of the United States for the district of Wisconsin, on the thirteetnh day of January, A. D. 1862, in the above-entitled cause, I shall sell at public auction, at the post office, in the city and county of Milwaukee, in said district, on the (25th) twenty-fifth day of April, A. D. 1863, at 2

o'clock in the afternoon, the following described mortgaged property, to wit: All and singular the several tracts, peices, or pacels of land which now are or may hereafter be, or constitute the site of the railway, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of the roads of said La Crosse and Milwaukee Railroad Company, from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all other improvements on, or pertaining to, said roads, whether now built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the equipments, of every kind and description, which have already been or may hereafter be procured for or used on said roads, or either
779 of them, and all the materials, tools, implements, utensils, and other personal property, which have been or may hereafter be procured for, or used in connection with said roads, or either of them, and also all and singular the rights, liberties, priviliges, and franchises of said La Crosse and Milwaukee Railroad Company, of every kind and description, relating to said roads; also, all and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company, under and by virtue of an act of the Congress of the United States, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3d, 1856, and under or by virtue of an act of the legislature of the State of Wisconsin, approved October 11th, A. D. 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress, entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said, approved June 3d, 1856,'' so far as the said lands pertain or are applicable to the construction of said roads from Madison by way of Portage City to the St. Croix river or lake, estimated to be about one million of acres of land, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate above mentioned and described; the rolling stock hereinbefore mentioned is to be sold subject to the lien of mortgages executed prior to the 31st day of December, A. D. 1856, except forty box cars, numbered, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and except such proportion or share of said rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenue of the portion of railroad of the La Crosse and Milwaukee railroad hereinbefore mentioned and described bears to the balance or other end of the road since the appointment of the receiver, which

said forty box cars, and said proportion of rolling stock purchased by the receiver are to be sold free and clear of any encumbrance whatever.

780 The lands heretofore mentioned as granted by the United States will be first sold, and if a sufficient sum shall not be realized therefrom to pay the amount adjudged to be due to the complainants for interest, together with costs, then the balance of the mortgaged property hereinbefore mentioned and described will be sold, and upon this sale the bonds secured by the mortgage described in the bill of complaint in this cause will be received in part payment of the proceeds of such sale, in the proportion which each bond at the principal thereof, for the amount thereof, according to this decree, (that is, the first nineteen hundred and ninety-one bonds at par, and the remainder at four hundred dollars on the thousand dollars,) bears to the amount of said sale.

DARIUS C. JACKSON,
*U. S. Marshal.*

Milwaukee, January 17, 1863.

CARY & PRATT,
*Solicitors for Complainants.*

And said Milwaukee and St. Paul Railway Company, and the said Soutter and Knapp, read in evidence on the hearing further from said land grant record, as follows, to wit:

And afterwards, on the same day, the several exceptions to the sale of the mortgaged premises came on to be heard, and the hearing of said exceptions not being concluded, the further hearing was adjouned until to-morrow morning.

MAY 5, 1863.

This day came the parties by their consel, and the argument of the several exceptions to the sale of the mortgaged premises by the marshal being concluded, it is ordered by the court that said exceptions be, and hereby are, overruled. And it is further ordered and decreed by the court that the said sale, so as aforesaid made, be, and hereby is, confirmed, and that the marshal make a deed to the purchasers.

And they further read in evidence, on the hearing, the articles of association of the Milwaukee and St. Paul Railway Company as follows, to wit:

781 (Copy.)

[U. S. revenue stamp, 60 cts.]

*Agreement.*

Articles of association of the purchasers of the La Crosse and Milwaukee Railroad Company, to organize a corporation under the statute laws of Wisconsin, under the name of the Milwaukee and St Paul Railway Company:

Whereas that part of the La Crosse and Milwaukee railroad, and the property, real and personal, described in the mortgage deed

made by that company to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, dated December 31st, A. D. 1856, in trust to them to secure the payment of the indebtedness therein named, and also described in a deed, executed by the same parties supplemental to the mortgage deed, in trust, last above named, and dated January 28th, 1858, both of which deeds are recorded in the office of the secretary of state for the State of Wisconsin, and copies thereof are on file in the district court of the United States for the district of Wisconsin, in the case of Bronson, Soutter, and Knapp, trustees, complainants, against the La Crosse and Milwaukee Railroad Company and others, defendants, to which copies, records, and files reference is here made for a more particular description of the property, real and personal, has been sold in pursuance of certain foreclosure proceedings had in the United States district court for the district of Wisconsin, on the complaint of said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, under said mortgage deed of trust made by the said La Crosse and Milwaukee Railroad Company, dated December 31st, A. D. 1856, and of a certain supplemental mortgage deed of trust, executed by the same parties, and dated January 28th, 1858, to the records of which court, and to the proceedings had therein in said action, reference is here made for a more full and particular statement thereof.

And whereas the undersigned have purchased said road at
782 said sale, and all its property, real and personal, franchises, and privileges, as described in said deeds.

Now, therefore, be it known that we, the undersigned purchasers as aforesaid, being desirous of forming a corporation, under and by virtue of the laws of the State of Wisconsin, do hereby associate together for that purpose, and do hereby declare the following to be the certificate or articles of association, and we execute the same in duplicate, to the end that one may be filed in the office of the secretary of state for the State of Wisconsin, and the other to remain in the records of our corporation as a record of our corporate rights, privileges, and *and* immunities.

First. Our corporate name shall be the "Milwaukee and St. Paul Railway Company."

Second. The number of directors shall be not less than nine or more than thirteen, and each director, from and after ninety days from this date, shall own at least one hundred shares of the capital stock of this corporation; and if, at any time, any director shall cease to own such amount, he shall be disqualified from being such director, and his office shall be from thenceforth vacant.

For the first year, and until others are chosen in their place, the following persons are the directors: Isaac Seymour, M. A. Cowdry, Horace Galpin, David M. Hughes, Wm. Gould, Frederic P. James, George Smith, all of New York, Ashail Finch and Wm. Hy. White, both of Milwaukee.

Third. Our capital stock shall not exceed. except as hereinafter provided, $4,200,000, divided into 42,000 shares, which said shares shall be subdivided as follows:

An amount not exceeding $3,450,000, or 34,500 shares, shall be set apart and designated as "preferred stock," and the full sum of $100 per share we hereby declare and acknowledge to be paid thereon, except on so much of this class as is hereinafter designated as "scrip preferred stock;" and on this scrip stock, we hereby declare and acknowledge the sum of one dollar per share to be paid.

783 The balance of said capital stock of $750,000 or 7,500 shares, shall be designated as common stock; and we hereby declare and acknowledge the full sum of one hundred dollars per share to have been paid thereon.

Of the said $3,450,000 preferred stock, an amount not exceeding $2,200,000 at par, or 22,000 shares, shall be set apart and designated as "scrip preferred stock;" the scrip preferred stock here named, or hereafter named, shall not, at any time, exceed the amount of outstanding mortgage bonds hereinafter named.

The scrip preferred stock shall not be subject to any assessment, and shall entitle the person in whose name it stands upon our books to all the rights and privileges of other stockholders, except that it shall not entitle the holder to any dividend, or other profit or increase from the income or assets of this company.

It shall be issued in certificates of five and ten shares each, and shall accompany each mortgage bond of the company.

The holder thereof shall have the right, at any time within ten days after any dividend shall have been declared, and become payable on the preferred stock, tomake the scrip preferred stock attached to his bond full paid stock, upon the surrender to the company of the mortgage bond named by its number in his scrip certificate, and, upon surrendering said scrip certificate and bond, he shall be entitled to receive therefor the same number of shares of preferred full paid stock, and entitled to dividends.

The said preferred stock, except said scrip stock, shall be entitled to a dividend of seven per centum per annum, from the net earnings of each current year, after payment of interest on all the mortgage bonds, if the company earn so much during the current year, and before the payment of dividends to any other class of stockholders; but the company may reserve a reasonable working capital or surplus before the dividend shall be declared or paid on said preferred stock, which surplus shall not exceed, at any time, the aggregate sum of $250,000 over and above the floating or unfunded debt, and the accrued interest on the mortgage bonds. If the net earnings of the company are not as much as seven per cent. in any one year,

784 then the said preferred stock shall receive, for that year, a dividend of whatever the said net earnings are, after the payment of interest on the mortgage bonds, and the reasonable reserve for a working capital as above described. Said preferred stock shall not have any claim upon the earnings of any other year for the non-payment of dividends of any preceding year.

And whenever the company earns sufficient, over and above the payment of interest on the bonds and the reserve above named, to pay a greater sum than seven per cent. on said outstanding preferred

stock, and seven per cent. on the common stock, then the said preferred stock shall share, pro rata, with the common stock in such earnings.

Fourth. The directors of the company shall have power to increase the said capital stock, as follows, viz: To acquire, by purchase or otherwise, either the road and property now known as the eastern division of the La Crosse and Milwaukee Railroad Company —or any bonds secured by mortgage thereon—the sum of $4,000,000, which shall be subdivided as follows, into the preferred stock named in the third article hereof, and in addition thereto, and as a part thereof, $2,750,000, or 27,500 shares, of which $2,000,000, or 20,000 shares, shall be designated as scrip preferred stock of the same class, and to be issued and used in the same manner as is provided in the third article hereof. The balance of said $4,000,000 increase—$1,250,000, or 12,500 shares—shall be in addition thereto, and as a part thereof, of the common stock, as provided in said third article.

And if, at any time, the directors deem it for the best interest of this company to acquire, by purchase, or otherwise, the road and property now known as the Milwaukee and Western railroad—commonly called the Watertown road—or any bonds of said road secured by mortgage thereof, then, and to that end, and for the construction thereof from Columbus to Portage, and for other uses of the company—the directors are hereby authorized to increase the capital stock, and to issue the like amount of bonds, preferred stock, scrip stock, and common stock, as named in the previous paragraph of this article, and in addition thereto.

And if at any time the directors deem it for the interest of
785 this company to acquire, by purchase or otherwise, the road or property now known as the Milwaukee and Horicon railroad—or any bonds of said company secured by mortgage of said road—then, and to that end, the directors are hereby authorized to increase the capital stock, and to issue it in addition to the amounts previously stated, as follows, viz: of the preferred stock, $800,000, or 8,000 shares, of which $400,000, or 4,000 shares, shall be designated as scrip preferred stock, of the same class, and to be issued and used in the same manner as is above provided; and to issue of the common stock $250,000, or 2,500 shares.

If at any time the directors deem it for the best interest of this company to acquire, by purchase or otherwise, the road or property of any railroad company connecting with the railroad of this company, and which they are now, or hereafter shall be, authorized by the laws of Wisconsin to consolidate or join stock with, then, and to that end, the directors of this company are hereby authorized to increase and issue either or both classes of its capital stock, in addition to the amounts above provided, to an amount not exceeding the gross amount of the capital stock of the company acquired, consolidated, or joined stocks with.

Fifth. This corporation shall have all the powers, privileges, and immunities of railroad companies under the laws of Wisconsin; and especially to sue and be sued, to acquire, use, and sell, bargain, lease,

and convey all kinds of property, real and personal, necessary or convenient to operate, use, and maintain said railroad, or the part or the whole of any other railroad hereafter acquired by them within the State of Wisconsin. To make any by-laws for the government and management of the corporation, or its officers, not contrary to the laws of Wisconsin, or of the United States. To make, have, and use a common seal, and the same to alter and renew at pleasure. And the said corporation is hereby invested with all the powers, privileges, and immunities which are necesaary or convenient to carry into effect the purposes and objects of this corporation, as herein expressed.

The said corporation is hereby authorized to take, transport,
786 and carry property and persons by railway, by force and power of steam, or of animals, or of any mechanical or other power, or of any combination of them, which said company may choose to apply, and from any part of the city of Milwaukee to the Mississippi river, and to and across said river, and to and from all intermediate places. They are also authorized and empowered to lease, buy, purchase, receive, hold, use, sell, and convey all the property and franchises, furniture, and equipments, real and personal, of the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, the Milwaukee and Western Railroad Company, the Milwaukee and Horicon Railroad Company, or of any other railroad company to which either of the above-named companies is or may be a successor, or with which this company may join stocks, or consolidate with; also the capital stock of either of them, and any or all mortgage bonds, or other evidences of debt made by either of them, and when purchased by this company they shall have all the legal and equitable rights that the holders thereof had before their sale to this company.

Also to support, maintain, hold, use, sell, and convey one or more steam ferry-boats, to be used on the Mississippi river.

Also to purchase, hold, use, sell, and convey, upon this line of railway or elsewhere, any materials, engines, cars, steam ferry-boats, or any other property, real or personal, necessary or convenient for this corporation. and for their use in transporting persons and property, to purchase, receive, and hold, and to sell and convey such real estate as may be necessary and convenient in accomplishing the object for which this company is incorporated.

This company shall also have all the powers, rights, privileges, and equities which are or were had by the La Crosse and Milwaukee Railroad Company, to acquire, receive, hold, bargain, sell, and convey lands; and they shall also have power to purchase, acquire, receive, hold, bargain, grant, sell, and convey all or any part of the lands, or the appurtenances thereto, which have been heretofore, or shall hereafter be granted or donated by the United States to the State of Wisconsin, to aid in the construction of railroads in that State, or by either of them, to aid in building the road of this company, and also all rights, equities, or things whatsoever per-
787 taining to said lands; and also to have, hold, bargain, and sell

all claims, demands, or equities to said lands, against the United States, the State of Wisconsin, or against any and all persons or corporations whatsoever.

Also to fix, regulate, and receive the tolls and charges by them to be received for transportation of persons or property.

The said corporation shall have power to build and construct any new line of railway necessary or convenient in straightening the old line, or in extending it so as to conform to the requirements of the charters of either of the companies herein named, or with the law of the State of Wisconsin, and to build or extend their line of railway in such manner and form, and to such place or places, now or hereafter authorized by law, as the directors deem for the best interest of the company, but no expenditure shall be made for this purpose, unless it is from the surplus earnings of the company, after providing for the payment of interest on all its mortgage debt then outstanding.

Sixth. The corporation shall have power to issue bonds in sums of $500 and $1,000, to an amount not exceeding two million two hundred thousand dollars, unless the company shall purchase or acquire either the said eastern division of the La Crosse and Milwaukee railroad, or some or all of the bonds which are a lien thereon, known as first mortgage eastern division, city of Milwaukee mortgage, or the second mortgage, so called, of said eastern division, in which event the corcorporation is authorized to issue an additional amount of said bonds, not exceeding two millions of dollars, and unless the corporation shall purchase or acquire either the said Milwaukee and Western railroad (commonly called the Watertown road) or some or all of the bonds which are a first lien thereon, and shall build or undertake to build or extend said road from Columbus to Portage, in which event the corporation is authorized to issue an additional amount of said bonds not exceeding two millions of dollars, and unless the corporation shall purchase or acquire either the Milwaukee and Horicon railroad, or some or all the bonds which are a first lien thereon, in which event the corporation is authorized to issue an additional amount of said bonds not exceeding four hundred thousand
788 dollars. All of said bonds shall bear an interest of not exceeding seven per centum per annum, the principal and interest payable in the city of New York, the interest semi-annually, the principal within thirty years from date; they shall also contain a provision that if the company make default in the payment of interest, or in the application of the sinking fund, as hereinafter provided, for six months, the principal shall thereupon become due, without demand or notice. The said corporation shall have power to secure the payment of all of the bonds above authorized to be issued, by a mortgage or trust deed upon this franchise, and all the real and personal property of the company, now owned or to be hereafter acquired by them, and to embrace the entire corporate property, and all its franchises and privileges.

The mortgage shall also contain a provision for a sinking fund for the payment of said mortgage bonds, by which the new company

shall obligate themselves to pay to the trustees of said mortgage bonds all such sums of money, less the expenses of sales, as shall be derived from the sale of any lands which may have been or shall hereafter be donated or granted by either the United States or the State of Wisconsin, to aid in building this road, or that shall in any manner be acquired by this company. And said lands shall be fairly and equitably valued and classified by the company, or by such persons as they together shall appoint; and upon sale of said lands, said mortgage bonds may be received at par, and accrued interest in payment therefor, and the bonds thus received in payment shall be immediately cancelled. The company shall keep a proper registry or account of all the bonds thus paid by them, and the number or amount of bonds thus cancelled shall be reported by said company to the stockholders at each annual meeting, and said bonds shall be presented and shown at said meeting. And said trust deed shall contain all other reasonable and proper provisions for making said lands the most productive and available to the company, as a sinking fund for the payment of said bonds.

The bonds secured by said mortgage shall be convertible, at the option of the holder, into the preferred stock, at any time within ten days after any dividend shall have been declared and become payable on said preferred stock.

789 The said mortgage deed and bonds shall be signed by the president, or vice president, and secretary, and the seal of the company shall be affixed thereto.

And except as herein expressly provided, the corporation shall have no power or authority to mortgage or otherwise encumber their property, real or personal, unless the assent in writing of a majority in interest of the owners and holders of all the capital stock issued by said corporation shall be first had and obtained, authorizing the same, and no assent shall be taken from agents, or by proxy, unless the power of attorney held by the agent or proxy shall expressly authorize such assent.

And in the event of this company acquiring the said eastern division of the La Crosse and Milwaukee railroad, the said mortgage or trust deed shall also contain a provision requiring so many of the mortgage bonds above authorized to be issued as are reserved for the payment of the first mortgage eastern division, to be cancelled from time to time as the present sinking fund on that mortgage shall have cancelled of that mortgage.

The said mortgage, or trust deed, may also contain covenants and agreements authorizing the bondholders to vote in all stockholders' meetings as follows: Each one hundred dollars of the principal of the outstanding bonds shall be entitled to one vote; and giving the bondholders the same pro rata voice in the management of the company with, and as if they were, stockholders to the amount of their bonds.

Seventh. The immediate government and direction of the affairs of the company shall be vested in a board of not less than nine nor more than thirteen directors; and after the period for which the present directors are designated expires, said directors shall be

chosen by the stockholders of said company by ballot, at their annual meeting in each year, and shall hold their office until the next annual meeting of the company, or until others are duly elected and qualified to take their places as directors.

The preferred stockholders shall elect the directors until a dividend shall have been earned, declared, and paid on the com-
790 mon stock, and until then the common stockholders shall have no vote or voice in the election of directors.

The said directors shall elect one of their number president of the board, who shall also, by virtue thereof, be president of the company, and shall also elect a vice president from one of their number. They shall also appoint a secretary, and such other officers or agents as the necessity or convenience of the company requires.

A majority of the directors of the company shall constitute a quorum to do business; a less number may adjourn from time to time.

In all meetings of the stockholders of said company, each share shall entitle the holder thereof to one vote, which vote may be given by said stockholder in person, or by lawful proxy. But this shall not authorize a common stockholder to have a vote for the choice of directors until a dividend has been paid on the common stock, as above provided.

In case it shall so happen that an election of directors shall not be made on the day appointed for that purpose, said corporation shall not for that cause be dissolved, but said election may be had on any day to which the stockholders shall adjourn, or which shall be appointed by the directors. And said directors shall have power to fill any vacancy which may occur in their board by death, resignation, or otherwise, and to add to their numbers so as not to exceed thirteen in all.

The said directors shall have power to make and prescribe such by-laws, rules, and regulations as they shall deem proper and needful, touching the disposition and management of the stock, property, estate, and effects of said company, the transfer of shares, the duties and conduct of their officers, agents, and servants, and all matters whatever which may appertain to the concerns of said company, not contrary to those established by the stockholders, or to this act, or to the laws of the State of Wisconsin, or of the United States.

Also to petition and apply for any law of the State of Wisconsin in alteration hereof, but such law shall contain a clause requiring the same to be submitted to the stockholders for approval, upon which the validity of any alterations hereof shall depend.

791 Eighth. The signing of this certificate or articles of association is hereby declared to be a special meeting of the stockholders, and a vote, and the assent of the stockholders to borrow the money, and to mortgage the road for the amount, as above set forth, and also to be a waiver of any notice required of the meeting on that subject.

Ninth. The certificates of stock issued by this company shall, upon their face, be made subject to all the terms and conditions of these articles of association.

Tenth. Upon the dissolution of this corporation, after the payment of all its debts, the remaining assets shall be divided among the different classes of stockholders, according to their preferences; that is to say, the preferred stock, except the scrip stock, shall be first paid in full, and the balance divided among the common stockholders pro rata. But this corporation shall not be dissolved by any act of the company without an affirmative vote of two-thirds of each class of stockholders.

Eleventh. These articles of association may be modified, altered, or amended at any annual or special meeting duly called, at which a majority in interest of each class of stockholders shall be present, and voting in the affirmative. But no stockholder shall become liable to pay any money by any such action unless he shall have voted therefor or assented thereto.

Twelfth. Annual meetings of the stockholders for the choice of directors shall be held in the State of Wisconsin, in the month of June, in each year after 1864, which meeting shall be called by the directors, who shall specify the time and place for holding the same. And at least thirty days previous to each annual meeting the directors shall send, through the post office, to each stockholder, to the address, as shown by the company's books, a full and specific statement of all the business, acts, and doings of the corpora-
792 tion up to the 1st day of January preceding.

Witness our hands at the city of Milwaukee, this 5th day of May, 1863.

WM. HY. WHITE.
WILLIAM WALLACE PRATT.

Filed May 5, 1863, 5½ o'clock p. m.

EDWARD ILSLEY,
*As'st Sec'y of State.*

SECRETARY'S OFFICE.

STATE OF WISCONSIN, *ss:*

The secretary of state of the State of Wisconsin hereby certifies that the foregoing has been compared with the original articles of association on file and on record in the office, and that the same is a true and correct copy thereof, and of the whole of such original, with the time of filing indorsed thereon.

In testimony whereof I have hereunto set my hand, and affixed the great seal of the State, at the capitol in Madison, this sixth day of May, A. D. 1863.

[SEAL.] EDWARD ILSLEY,
*Ass't Secretary of State.*

[5 cent revenue stamp.]

793 The said Milwaukee and St. Paul Railway and the said Soutter and Knapp further read in evidence an act of the legislature, ratifying the organization of the Milwaukee and St. Paul Railway Company, as follows, to wit:

*An act ratifying the organization of a corporation therein named.*

The people of the State of Wisconsin, represented in Senate and assembly, do enact as follows:

Section 1. The organization of the Milwaukee and St. Paul Railway Company, as provided by its articles of association, filed with the secretary of state on the 5th day of May, 1863, is hereby ratified and confirmed, and said company is hereby declared to be a corporation, with all the rights, powers, privileges, and franchises which were of the Milwaukee and Western Railroad Company, Milwaukee and Horicon Railroad Company, and of all that part of the La Crosse and Milwaukee Railroad Company pertaining to its road lying west of Portage City.

Section 2. This act shall take effect and be in force from and after its passage and publication.

WM. W. FIELD,
*Speaker of the Assembly.*
U. H. CHANDLER,
*President of the Senate, pro tem.*

Approved April 10th, 1865.

JAMES T. LEWIS, *Gov. Wis.*

STATE OF WISCONSIN, *Secretary's Office, ss:*

The secretary of state of the State of Wisconsin hereby certifies that the foregoing has been compared with the original enrolled act deposited in this office, and that the same is a true and correct copy thereof, and of the whole of such original.

In witness whereof, I have hereunto set my hand and affixed the great seal of the State, at the capitol, in Madison, this thirteenth day of April, A. D. 1865.

[SEAL.]

LUCIUS FAIRCHILD,
*Secretary of State.*

[5-c. in. rev. stamp, cancelled.]

And the said Milwaukee and St. Paul Railway Company and the said Soutter and Knapp further read in evidence on the hearing the answer of said Milwaukee and St. Paul Railway Company in the second mortgage foreclosure cause, to the petition and motion of the Milwaukee and Minnesota Railroad Company, for an attachment, &c., as follows, to wit:

794 Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

795 The joint and several answer of Alexander Mitchell, president, S. S. Merrill, manager, A. Reasoner, superintendent, A. Cary, secretary and treasurer, and Washington Hunt, W.

S. Gurnee, Frederick P. James, John W. Cary, Selah Chamberlain, Russell Sage, N. A. Cowdrey, E. B. Wesley, Horace Galpin, David M. Hughes, and Daniel Wells, jr., directors of the Milwaukee and St. Paul Railway Company, and of the said Milwaukee and St. Paul Railway Company, to the motion and the application of the Milwaukee and Minnesota Railroad Company for an attachment as for contempt against said parties in this cause:

Your respondent, hereby protesting that the motions and proceedings of the said Milwaukee and Minnesota Railroad Company in this particular are not in accordance with the rules and practice of this honorable court in such cases made and provided, and that there is no cause or ground for an attachment as for contempt in the said several matters and things in the said motion and papers annexed contained, and saving and reserving to themselves all manner of benefit and advantage of exceptions to the many errors and insufficiencies therein contained for answer, thereto say:

First. That said order of July 18th, 1865, in said motion, papers mentioned and contained, is not such an order or decree of this honorable court as can be enforced by process of attachment as for contempt, for the reason that there is no time limited in said order within which performance thereof was to be made, as is required by the rules and practice of this court in such cases established.

Second. That said order of July 18th, 1865, was conditioned in its terms and nature, and required the delivery to the Milwaukee and Minnesota Railroad Company upon the condition that the said Milwaukee and Minnesota Railroad Company should first pay a certain amount of money into court, and do and perform certain other acts, the performance of which were conditions precedent to the delivery to said railroad company as provided in said order, and that for that reason a further order of this honorable court was required, after the pretended performance by said Milwaukee and Minnesota Railroad Company on its part, judicially determining such performance and fixing a time within which delivery should be made to said Milwaukee and Minnesota Railroad Company in pursuance of said order, in order to found thereon proceedings as for a contempt, for a failure to comply therewith.

Third. Your respondents above named respectfully show and state that as they are advised and believe said Milwaukee and Minnesota Railroad Company never complied with the order of July 18th, 1865, of this court, in this cause, set forth in its said application so as to entitle it to the possession of the railroad therein named or any part or portion thereof, or of the rolling stock therein named, in that said Milwaukee and Minnesota Railroad Company did not comply with that portion of said order which required "that before said Milwaukee and Minnesota Railroad Company should be allowed and permitted to enter into possession as aforesaid, it should make, execute, and file with the clerk of this court a bond to the United States in the penal sum of twenty-five thousand dollars, with sufficient surety, to pay to Sebra Howard and Selah Chamberlain, or the owners of said judgments, or either of them, all such sums as may come into

the hands of said company which shall hereafter be found to be rightly applicable to the payment of their claims, if they shall be established as liens upon said road.

That there never was any other compliance therewith than the pretended execution, in the city of New York, of the paper, writing, in document A, attached to said motion, purporting to be the bond of said railroad company with Wm. R. Griffith, A. Fleming, and A. C. Gunnison as sureties; that said Wm. R. Griffith, A. Fleming, and A. C. Gunnison were, at the time of executing the same, and now are, citizens and residents of the State of New York; that, as your respondents verily believe and are informed, said Fleming and Gunnison were at the time of executing said bond, and ever since have been and now are, utterly and entirely irresponsible for any sum whatever, and that so they are reputed and esteemed; and that said Griffith is a stranger to your respondents, but that on inquiry made in the city of New York, where he is said to reside, they are unable to ascertain that he has any reliable means or property, and that he is not responsible for any amount.

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That when said pretended bond was presented to the clerk of this court for his approval on the 9th day of January, 1866, and before its approval, John W. Cary, above named, on behalf of the Milwaukee and St. Paul Railway Company, and Fred. P. James, the owners of the Chamberlain and Howard judgment, appeared before said clerk and then and there objected to the reception or approval of said bond, in writing, now on file in this court, in the words and figures following, to wit:

Circuit court of the United States, 9th circuit, and district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

And now comes the Milwaukee and St. Paul Railway Company, the owner of the Chamberlain judgment, and Fred. P. James, the owner of the Howard judgment mentioned in the order of this court of July 18th, 1865, by John W. Cary, their solicitor, and excepts to the bond of the Milwaukee and Minnesota Railroad Company, and the sureties thereto, filed in pursuance of said order to account for the net earnings of said railroad, and objects to the approval thereof by the clerk of the court.

First. Because said sureties are not citizens or residents of the State or district of Wisconsin.

Second. Because said sureties are wholly irresponsible and unable to respond to the penalty of said bond.

And the said Milwaukee and St. Paul Railway Company and said Fred. P. James hereby demand an oral examination and justification

by said sureties on oath before said bond shall be approved by the clerk of this court.

JOHN W. CARY,
*Solicitor for said M. & St. R'y Co.*
FRED. P. JAMES.

That said clerk then and there assumed authority to refuse said demand for an oral examination and justification and to overrule said exceptions.

And your respondents state that as they are advised and believe that said bond and the proceedings thereon are void and no compliance with the order of this court.

First. Because it was not competent for said railroad company to execute said bonds without the bounds of said State.

Second. Because the sureties therein named are not resi-
797 dents or citizens of the State and district of Wisconsin, but are residents of the State of New York.

3d. Because said sureties being officers and directors of said railroad company, and being themselves entirely irresponsible, was notice to said railroad company of its insufficiency, and its presentation to the clerk for his approval by said railroad company was therefore a fraud upon the court and the parties interested, and was not a compliance with said order.

4th. Because the clerk is not a judicial officer, and his approval did not operate to change the character of the bond, and if the bond was not such as the law required, his approval could not cure it, but would leave it invalid still. Your respondents therefore submit that said railroad company did not comply with said order of July 18th, 1865, and were not entitled to the possession of said road or rolling stock, or any part or portion thereof, and that this proceeding should for that reason be dismissed.

Fourth. Your respondents further show that since the first day of May, 1864, up to the time when the Milwaukee and Minnesota Railroad Company took possession of the eastern division of said La Crosse railroad, the rolling stock purchased by the receiver, had been and then was in the joint possession of the Milwaukee and St. Paul Railway Company, and Hans Crocker, the receiver of said eastern division, and that the same was owned jointly by said railway company and the owners of the eastern division of said La Crosse and Milwaukee railroad. That the proportion thereof belonging to the Milwaukee and St. Paul Railway Company was such proportion of the whole thereof as the net earnings of the western division of said La Crosse railroad bore to the net earnings of the eastern division thereof, while the whole road was operated by the receiver, prior to the sale of the said western division, which proportions were fixed by said order of July 18th, 1865, in value as $26,199 00 to the Milwaukee and St. Paul Railway Company, to $121,178 00 to the eastern division, but that no valuation or division of said rolling stock was made by said order or in any other manner, and that no valuation or division thereof had ever been made.

That during the whole time from May 1, 1864, to the 20th day of January, 1866, when the Minnesota company took actual possession of the said eastern division, said rolling stock so purchased by the receiver was used in common with the rolling stock of the Milwaukee and St. Paul Railway Company, on the said eastern division and on the Milwaukee and St. Paul Railway Company's road, under the arrangement made between the receiver and said railway company, and such portion of said rolling stock as was on said eastern division when said railroad company took possession was left there.

That afterwards on the 27th day of January, 1866, the Milwaukee and St. Paul Railway Company received from Hans Crocker, receiver a notice in writing relative to said rolling stock in the words and figures following, to wit:

MILWAUKEE, *Jan.* 20*th*, 1866.

S. S. Merrill, esq., superintendent of the Milwaukee and St. Paul railway:

DEAR SIR. In obedience to the order of the circuit court of the United States for the district of Wisconsin, I have this day surrendered to the Milwaukee and Minnesota Railroad Company the eastern division of the La Crosse railroad, with all the personal property and rolling stock then in my possession as receiver; the order further requires your company and myself to surrender such original rolling stock as I received under the appointment in the land grant case and Howard case, and which I surrender to you under the order of court in the land grant case; I therefore demand possession of all said rolling stock, for the purpose of surrendering the same to the Milwaukee and Minnesota Railroad Company; said order further requires me to deliver a part of certain property enumerated in the order (copies of which have been served upon your company) to the said Milwaukee and Minnesota R. R. Co., and part to your company. As a portion of said last-mentioned stock has, in operating the eastern division and making connections with the western, been necessarily run upon your division, and in fact been claimed by you as rightfully in your possession under orders of the court, I now demand the same of you, for the purpose of dividing the same as required by said orders, and request that you and said company voluntarily agree upon a fair division; if not, I must take the responsibility of dividing said stock as justly and as much in accordance with the interest of both companies as I can.

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Very respectfully,

H. CROCKER, *Receiver.*

Which was the first demand or request of any kind or description made upon said Milwaukee and St. Paul Railway Company for said rolling stock. That on the day of the receipt of said communication from Hans Crocker, receiver, the Milwaukee and St. Paul Railway Company answered the same in writing as follows, to wit:

No further communication was received from said receiver until on

or about the 31st of January, 1866, when the Milwaukee and St. Paul Railway Company received the following proposition from him, to wit:

OFFICE OF THE MILWAUKEE & ST. PAUL RAILWAY COMPANY,
*Milwaukee, January 27th*, 1866.

Hans Crocker, esq., receiver, &c.:

DEAR SIR: Your favor dated the 20th inst. is this day received.

We do not admit your exclusive possession of or right to divide the rolling stock purchased and built by you as receiver, consisting of eight locomotives, two passenger cars, one baggage car, six caboose cars, and one hundred and thirty-four freight cars. This rolling stock has, since the first day of May, 1864, been in the joint possession of yourself and this company. The order of July 18th, 1865, entered by the circuit court of the United States in the case of Soutter, survivor, &c., *vs.* La Crosse R. R. Co. *et al.* required that you should deliver to the Milwaukee and Minnesota company the proportion of said rolling stock belonging to the eastern division, but made no provision for the division thereof.

It is therefore necessary for yourself and this company to make some division of it in order that you may be able to carry out the said order of the court.

For that purpose we propose a division as follows: you may take six of the eight locomotives, one of the two passenger cars, all of the caboose cars, and one hundred and twelve of the one hundred and thirty-four freight cars, subject to the further order of the court, or such arrangement as may be made between the parties interested to effect a more perfect and accurate division.

If this proposition is not satisfactory to you we should desire to receive one from you.

Of the locomotives so purchased by you, Nos. 22, 24, and 25 are now on the eastern division, and in possession of the Milwau-
799 kee and Minnesota co.; No. 36 (formerly 31) is at Portage, subject to your order, and Nos. 29 and 30 are now undergoing slight repairs at our shop at Watertown, but will be at Portage on Tuesday next subject to your order, one of the passenger cars and nearly all the caboose cars are now on the eastern division, and a considerable portion of the freight cars. The remainder of the freight and caboose cars will be delivered at Portage subject to your order as soon as they can be collected and brought there. The locomotives, Nos. 23 and 28, which we propose to retain are at our shops at Watertown, unfit for use and being repaired by this company.

The rolling stock that was on the road when you took possession as receiver on the 11th day of June, 1860, was, by an order of the court made in the land grant cause on the 12th day of June, 1863, delivered to this company as purchaser under the decree in that case, and since that time has not been in your custody or under your control, but has been in the exclusive possession of this company. We must therefore decline to recognize your right as receiver to receive or demand from us any portion of said last named rolling stock.

The title to this stock is now in litigation between this company and the Milwaukee and Minnesota company, and whenever the court shall have passed upon our right we shall cheerfully conform to its decision.

In the meantime, in order that the public may not be incommoded, and that the Minnesota company may have ample stock to operate said eastern division, we shall furnish of said rolling stock to said company sufficient in addition to their proportion of that purchased by the receiver to operate their road.

We have already furnished them from said original stock nine locomotives and passenger and freight cars for the transaction of their business, and shall furnish them all that may be necessary in addition to their proportion of that purchased by the receiver for the successful operation of said eastern division.

Yours, respectfully,

S. S. MERRILL,
*General Manager.*

No further communication was received from said receiver until on or about the 31st of January, 1866, when the Milwaukee and St. Paul Railway Company received the following proposition from him, to wit:

MILWAUKEE, *January* 31, 1866.

S. S. Merrill, esq., manager of the M. & St. P. R. W. Co.:

DEAR SIR: I am desirous, as soon as possible, of making a division of the rolling stock purchased and built by me, and owned jointly by the eastern division of the L. and M. R. R. and your company, upon the basis fixed by the court. I assume that in making this division, we must take the stock as it now is, and not as when built or purchased by me. For the purpose of making this division, I propose that Mr. Dwight Goodrich and Mr. W. E. Kittridge shall estimate and return to me the value of this rolling stock at the present time, and upon receiving their return and award, I will make a division as nearly just as possible.

You may object to the parties as they are both now in the service of the eastern division (the M. and M. R. R. Co.) I have selected them, as they were in my service when this rolling stock was purchased and built, and being competent, honest men, I think
800 them best qualified to determine the value of this property.

While I have the power to make an arbitrary division, I prefer to make one satisfactory to all parties.

Yours, etc.,

H. CROCKER, *Receiver.*

This proposition of the receiver was immediately, and on the same 31st day of January, 1866, accepted by the said Milwaukee and St. Paul Railway Company, in writing, as follows, to wit:

MILWAUKEE, *January* 31, 1866.

Col. H. Crocker, receiver:

DEAR SIR: Your favor of this date, in reference to division of rolling stock purchased by you, proposing to have D. Goodrich and W. E. Kittredge estimate the present value of each car, engine, etc., and return the same to you. and that you make the division thereof, is received.

Your proposition is satisfactory, and we assent to it.

Yours, respectfully, &c.,

S. S. MERRILL,

*General Manager.*

Your respondents further show that said Goodrich and Kittredge were at the time of making and accepting said proposition in the employ of the said Milwaukee & Minnesota Railroad Company, one as master mechanic, and the other as superintendent of the car shop, and that they had formerly been in the employ of the said receiver and of the Milwaukee & St. Paul Railway Company in the same capacity, and were well qualified to estimate the value of said rolling stock.

Your respondents further show that they are now and ever since the said 31st day of January, when said proposition was accepted, have been ready and willing to submit to and carry out such disposition and division of that said rolling stock whenever the same shall be made by the receiver. That no proposition for a division thereof has ever been made to these respondents, or any of them, by the said Milwaukee & Minnesota Railroad Company, of any kind or description, and that no other proposition except as above set forth, has ever been made to them for such division, and the respondents expressly deny that that have ever in any manner refused to comply with said order of July 18th, 1865, in relation to the rolling stock purchased by the receiver, but have at all times been willing to submit to any fair and just method of dividing the same on the basis fixed by the court in said order, and in all things and in all ways stand to and abide by said order while in force, relating to said rolling stock so purchased and built by the receiver, and so advised the Milwaukee & Minnesota Railroad Company, as appears by the letter of S. S. Merrill, general manager, hereinafter set forth.

And these respondents further show that the whole amount of rolling stock purchased and built by the receiver, which was still in use on the 4th day of January, 1866, was as follows, to wit:

| | |
|---|---|
| Locomotive engines, (22. 23, 24, 25, 28, 29, 30, 31) | 8 |
| Passenger coaches, (19 and 20) | 2 |
| Baggage cars, (No. 9) | 1 |
| Box cars | 224 |

That of this stock so purchased and built by the receiver, there has been delivered by the respondents, Milwaukee & St. Paul
801 Railway Company and said Hans Crocker, receiver, to the Mil-

waukee & Minnesota Railroad Company, the following locomotives and cars, to wit:

| | |
|---|---|
| Locomotive engines, (22, 24, 25, 29, 30, 31, new No. 36,) | 6 |
| Box cars | 155 |
| Baggage cars | 1 |
| Passenger coaches, (19 and 20) | 2 |

And that the remainder of said stock is now in the possession of the Milwaukee and St. Paul Railway Company. That forty-three of the above-named box cars were flat cars, which were on the road when the receiver took possession on the 11th day of June, 1860, and were by the receiver changed into box cars, and six of the box cars that were on the road on the said 11th day of June, 1860, were by the receiver changed into caboose cars, and four of the box cars built or purchased by the receiver were used up in the service prior to the 4th of January, 1866.

Fifth. And your respondents, further answering as to the rolling stock which was on the road, and of which the receiver took possession on the 11th day of June, 1860, on information and belief, respectfully show unto this honorable court, that all of said last-named rolling stock was covered by and included in the mortgage given by the La Crosse & Milwaukee Railroad Company to Greene C. Bronson, James T. Soutter, and Shephard Knapp, and that the said receiver took possession thereof in virtue of his appointment in the foreclosure suit of said Bronson, Soutter, and Knapp against the La Crosse & Milwaukee Railroad Company and others, brought to foreclose the land grant mortgage above mentioned, in the district court of the United States for the district of Wisconsin; that the same was included in the decree of foreclosure and sale in that cause directed to be sold; and that the same was sold by the marshal by virtue of the decree in that cause, on the 25th day of April, 1863, and conveyed by him to Pratt and White on said sale; that said Pratt and White, on the 5th day of May, 1863, conveyed the same to the Milwaukee & St. Paul Railway Company, which said company thereby became the owner of all of said rolling stock, together with the western division of said railroad, all of which said rolling stock was then in the hands of Hans Crocker as receiver; that afterwards, and on the 6th day of May, 1863, said Milwaukee & St. Paul Railway Company applied by petition to the said district court of the United States to be let into the possession of the property so purchased, and that the receiver be discharged therefrom. That said application was opposed by the Milwaukee & Minnesota Railroad Company, so far as it related to said rolling stock, and time asked to prepare to oppose the same; that thereupon, on the 7th day of May, 1863, the court granted said application so far as the same was not opposed, but required the Milwaukee & St. Paul Railway Company to operate the road jointly with the receiver, and continued the application for 30 days at the request of the said Milwaukee & Minnesota Railroad Company; that no possession was ever taken under the said order of May 7th, 1863, by the Milwaukee & St. Paul Railway Company, but the same re-

mained in the exclusive possession and control of the said receiver; that afterwards, and on the 11th day of June, 1863, said Milwaukee & Minnesota Railroad Company filed its answer to said application as to said rolling stock, (copies of which are hereto annexed, Exhibit No. 1,) and thereupon said district court made its order thereon in the words and figures following, to wit:

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

802 At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in the said district of Wisconsin, on the first Monday, being the fifth day of January, A. D. 1863; present the Honorable Andrew G. Miller, judge of said court, presiding.

On the 18th day of the said term, to wit, on the 12th day of June, A. D. 1863, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp, trustee,
*vs.*
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, *et al.*
} In equity.

On consideration of the said petition of the Milwaukee and St. Paul Railway Company, and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee and St. Paul Railway Company all and singular the railroad between the city of La Crosse and Portage City, its road bed and tracks, with its depots, station-houses, and all other property belonging to said railroad between the said points, and the forty box cars mentioned and described in the decree.

And also the share or proportion of the rolling stock and personal property purchased by the receiver, as mentioned in the decree; and also, subject to other or previous liens or claims, the possession of the rolling stock on hand when the receiver took the same under the order of the court.

And it is further ordered by the court that the said receiver be, and hereby is, discharged as such from the management and control of the said western division of said railroad under appointment in this case, subject, however, to the final settlement of his accounts, and subject to the orders made, or to be made, in this case, and in the other cases in which he was appointed or may hereafter be appointed.

And that thereupon, and in pursuance of said order, said rolling stock was delivered to said respondents, Milwaukee and St. Paul Railway Company as purchaser, as aforesaid, and from then until the making of said order of July 18th, 1865, remained in the exclusive possession of said railway company as the owner thereof under its purchase, as aforesaid, and not otherwise, and that said order of

the 12th of June, 1863, remains in full force and unreversed. That said Milwaukee and St. Paul Railway Company was not, and never has been, a party to this suit, either complainant or defendant; that it was never impleaded in this cause in respect to this rolling stock; that no issue was ever formed relative thereto in this cause, and that said respondent, Milwaukee and St. Paul Railway Company, never had an opportunity to establish its rights thereto, or to contest the claim or rights of the said Milwaukee and Minnesota Railroad Company thereto in this cause; and that, therefore, the said order of July 18th, 1865, so far as it assumed to divest said respondent, Milwaukee and St. Paul Railway Company, of the possession or ownership of said property, was, as these respondents are advised and verily believe, entirely without jurisdiction and void, and that if executed and enforced, it would operate to deprive the respondent, Milwaukee and St. Paul Railway Company, of its property without due process of law, your respondents, therefore, humbly and respectfully submit to this honorable court that said order of July 18th, 1865, so far as it required said respondent, Milwaukee and St. Paul railway, to deliver said rolling stock so on said railroad when said receiver took possession thereof on the 11th day of June, 1860, and so as aforesaid delivered to said railroad company under the aforesaid order of the district court of June 12th, 1863, was without jurisdiction and void, and therefore not binding upon these respondents, and that a failure on their part to comply with its terms did not render them liable to be proceeded against as for a contempt of the order of this honorable court.

803 Sixth. Your respondents further show that at the time said order of the 18th of July, 1865, was made, there was a suit pending in this court, brought by the said Milwaukee and Minnesota Railroad Company against this respondent, Milwaukee and St. Paul Railway Company and others, by way of supplemental bill to the aforesaid foreclosure suit of Bronson, Soutter, and Knapp, in which said supplemental bill it was set forth that the said respondent, the Milwaukee and St. Paul Railway Company, was in the possession of all the rolling stock of which the receiver took possession on the 11th day of June, 1860, claiming it as owner under said foreclosure purchase, and said supplemental bill prayed, among other things, that said Milwaukee and Minnesota Railroad Company might be declared by the decree of this honorable court the owner of all the rolling stock that was on the whole La Crosse and Milwaukee railroad at the time of the appointment of the receiver, except forty box cars, specially mentioned and described, which said bill had then been answered by said respondent, Milwaukee and St. Paul Railway Company, setting up its title under the foreclosure proceedings aforesaid, and was then at issue; that after the making of said order of the 18th day of July, 1865, your respondents learned of the existence of a certain supplemental mortgage executed on the 4th day of September, 1857, by the La Crosse and Milwaukee Railroad Company to said Bronson, Soutter, and Knapp, in pursuance of the covenants for further assurance contained in said land grant mortgage, and as a further

security to the bonds issued under it, which said mortgage expressly mortgaged and conveyed to said Bronson, Soutter, and Knapp, as trustees, all of said rolling stock on the La Crosse railroad of which the receiver took possession on the 11th day of June, 1860.

And your respondents further show that there was was a deficiency on the sale on said land grant foreclosure suit of Bronson, Soutter, and Knapp, on the 25th day of April, 1863, amounting to $1,129,201, which amount still remains due and unpaid on said bonds, with interest; and that the whole of said bonds and indebtedness secured thereby, excepting the sum of about $25,000, were, on the 5th day of May, 1863, sold, assigned, transferred, and delivered to said respondents, Milwaukee and St. Paul Railway Company, and ever since they have been, and now are, owned by said company in its own right; and that, in virtue of said supplemental mortgage, said Milwaukee and St. Paul Railway Company, if not the owner of said rolling stock by virtue of the sale on said foreclosure proceedings, was, at least, entitled to be regarded and treated as a mortgagee thereof, rightfully in possession, and that its possession could not be disturbed except by paying the balance due on said mortgage; that immediately on learning the existence of said supplemental mortgage, and at the September term, 1865, of this honorable court, your respondents, the Milwaukee and St. Paul Railway Company, amended its answer to said supplemental bill setting up said supplemental mortgage and its rights thereunder as a mortgagee in possession to said rolling stock, and at the same time filed a motion to modify said order of 18th July, 1865, founded on its petition setting forth said supplemental mortgage and the record in the cause, a copy of which said motion and petition are hereto attached as Exhibit No. 2, and which your respondents pray may be taken and made a part of this answer, which said motion was still pending and undetermined in this court until the present term of this court.

And your respondents further show that James T. Soutter and Shepherd Knapp, survivors, &c., of Greene C. Bronson, deceased, trustees, have, by the leave of this honorable court, filed a cross bill to said supplemental bill to foreclose and enforce said supplemental mortgage, which is now pending for hearing at this term of this honorable court.

Your respondents, therefore, submit that as they are ad-
804 vised by their counsel, and verily believe, that if said order of July 18th, 1865, is binding and obligatory upon the respondent, Milwaukee and St. Paul Railway Co., in regard to said rolling stock of which the receiver took possession the 11th day of June, 1860, yet the facts and proceedings subsequently occurring were sufficient to excuse a compliance therewith by said Milwaukee and St. Paul Railway Company in respect to said rolling stock, and that its failure so to do is not contempt or disobedience of the orders of this honorable court.

Your respondents further show that on day of November, the respondents, the Milwaukee and St. Paul Railway Company, in due form of law, took an appeal from so much of said order of July

18th, 1865, as directed it to deliver to the Milwaukee and Minnesota Railroad Company the rolling stock which was on the La Crosse and Milwaukee railroad when the receiver took possession of the same on the 11th day of June, 1860, to the Supreme Court of the United States, and the same is now there pending as number 314 of December term, 1865.

Your respondents further show that they were advised by their counsel, and verily believe, that said order of July 18th, 1865, so far as it related to the rolling stock on said road on the 11th day of June, 1860, was not binding and obligatory upon the respondents, the Milwaukee and St. Paul Railway Company, and that a surrender of said rolling stock so as aforesaid in the possession of the Milwaukee and St. Paul Railway Company might endanger or defeat its right thereto under its purchase on the land grant foreclosure as aforesaid, and oust said railway company of its rights as mortgagee in possession under the said supplemental mortgage, and impair, if not entirely defeat, its claim by the foreclosure on the said cross bill of said supplemental mortgage, and that upon that advice and under the belief that its rights would be thereby impaired, if not lost, your respondent, the Milwaukee and St. Paul Railway Company, declined to comply with the terms of said order of July 18th, 1865, so far as the same related to the rolling stock in its possession which was on the road the 11th day of June, 1860.

But that your respondents, the Milwaukee and St. Paul Railway Company, from deference to this honorable court, and in order that the interests of the public might not suffer during the pending of the litigation relating to said rolling stock, and in order that the said Milwaukee and Minnesota Railroad Company might be enabled to operate its said road, determined of its own motion to deliver as of its own property to said Milwaukee and Minnesota Railroad Company sufficient of said rolling stock, with that purchased by the receiver, belonging to the eastern division of said La Crosse railroad, to enable said Minnesota company to operate its road, and in pursuance of such determination, and in order that said railroad company might understand the position of your respondents, Milwaukee and St. Paul Railway Company, replied to the demand of said Minnesota company for the possession of said rolling stock in writing, as follows:

*Exhibit No.* 6.

OFFICE OF THE MILWAUKEE AND ST. PAUL RAILWAY COMPANY,
MILWAUKEE, 186 .
*Milwaukee, Jan. 29th, '66.*

To the Milwaukee and Minnesota Railroad Company:

Your printed demand upon this company for the delivery to A. Fleming of all of the rolling stock mentioned in the order of July 18th, 1865, entered in the case of James T. Soutter, survivor, *vs.* La Crosse and Milwaukee Railroad Company and others, in the circuit court of the United States for the district of Wisconsin, is this day received.

The rolling stock mentioned in said order purchased by the receiver, consisting of eight (8) locomotives, two (2) passenger cars, one (1) baggage car, six (6) caboose cars, and one hundred and thirty-four (134) house freight cars, has never been divided, but since the first day of May, 1864, has been in joint possession of the receiver and of this company, and is owned jointly by this company and the east division of said La Crosse and Milwaukee railroad.

The order of July 18th, 1865, requires the receiver to deliver a certain undivided proportion of said rolling stock to you, but provides no way or means of making a division or specifying the particular locomotives or cars to be delivered.

805 A portion of this stock has already been delivered to you by the receiver, to wit: three (3) locomotives and a large number of cars. One of the locomotives is now at Portage subject to the order of the receiver, and the remaining four (4) are in our shops at Watertown undergoing repairs. Two of them will be at Portage this week under the control of the receiver, and the cars on our line are being collected as rapidly as possible at Portage, so that the proportion belonging to the eastern division may be delivered by the receiver.

In order to enable the receiver to deliver to you in severalty the proportion of said rolling stock belonging to the eastern division, we have proposed to him a division thereof subject to future review and correction by the court or by the agreement of parties interested, and are ready to co-operate with him in making a fair and equitable division thereof.

We claim no interest in or control over the proportion of rolling stock purchased by the receiver belonging to the eastern division, and will unite with the receiver in making a division of the stock so purchased, and furnish him every facility in our power, when divided, to make an immediate delivery thereof to you.

The rolling stock which was on the road June 18th, 1860, of which the receiver took possession, was, by the order of the district court made on the 12th day of June, 1863, in the land grant foreclosure suit, taken from the receiver and delivered to this company as purchaser thereof under the land grant decree, and the receiver was, as to said property, discharged, since which time this company has been in the exclusive possession thereof. The title of this stock is now in litigation between this company and you, which litigation is not yet determined. No order has been entered therein disturbing our possession. Whenever the court shall have disposed of the question there raised, and settle the title and ownership of said stock, we shall cheerfully conform to its decision.

In the meantime we would avoid so far as possible any inconvenience to the public or injury to you arising therefrom; we shall therefore furnish to you of said stock sufficient to enable you, with your proportion of that purchased by the receiver, to operate your road.

To that end we have already delivered to you, as of our own property, nine (9) of said locomotives, together with passenger, mail, baggage, and freight cars, which are now in your possession, and should

the stock already furnished you by us, together with the proportion of that purchased by the receiver belonging to you, prove insufficient to operate your road, we will furnish, in addition of said orignal stock, an ample and more than sufficient quantity for that purpose; and in case of a difference of opinion on the subject, we will submit to the decision of any suitable and impartial umpire you may name.

Further than this we do not propose to deliver to you any part or portion of said rolling stock so on said road on the 11th day of June, 1860, but claim the same as of right and legally and properly in our possession and under our control; and we are advised that the course above indicated is practically a full and complete compliance with said order of July 18th, 1865, so far as the same is obligatory or binding upon us.

Respectfully yours,

S. S. MERRILL,
*General Manager.*

806 Your respondents further show that of the rolling stock which was on the road on the 11th day of June, 1860, of which the receiver took possession, there was in existence and in the possession of the Milwaukee & St. Paul Railway Company on the 4th day of January, 1866, the following, to wit:

| | |
|---|---|
| Engines | 23 |
| Box cars | 212 |
| Flat cars | 77 |
| Baggage do | 6 |
| Mail and express do | 3 |
| Passenger coaches | 15 |

That of this stock the Milwaukee & St. Paul Railway Company, on the said 29th day of January, 1866, and as soon thereafter as practicable, at different times, with the view above stated, delivered to the Milwaukee & Minnesota Railroad Company the following, to-wit:

| | |
|---|---|
| Engines | 9 |
| Box cars | 10 |
| Flat do | 24 |
| Baggage do | 3 |
| Mail and express do | 3 |
| Passenger do | 6 |

And also at the same time delivered to said Milwaukee & Minnesota Railroad Company thirty-eight box cars built or purchased by the Milwaukee and St. Paul Railway Company.

Your respondent further shows that there has been delivered to the said Milwaukee & Minnesota Company, by your respondents, Milwaukee and St. Paul Railway Company, and the said receiver, from the different classes of rolling stock which was in the possession of the Milwaukee and St. Paul Railway Company and said railway

company and said receiver on the 4th January, 1866, a total amount of rolling stock as follows, to wit:

| | |
|---|---|
| Engines | 15 |
| Box cars | 203 |
| Flat do | 24 |
| Baggage do | 4 |
| Mail and express do | 3 |
| Caboose do | 6 |
| Passenger do | 8 |

And that exhibit No. 3, hereto annexed, contains a particular description of the rolling stock so delivered.

That the road of said Milwaukee & Minnesota Railroad Company is ninety-five miles in length, and that the rolling stock last above named is ample and sufficient for its operation and more than can be used thereon to advantage, or than is required for the transaction of all the business done on said road or than ever has been furnished by the country tributary thereto, and that, as your respondents are informed and believe, the Milwaukee and Minnesota company has suffered no damage or inconvenience from not having a larger amount of rolling stock.

Your respondents, further answering, say that the whole of said rolling stock mentioned in the order of July 18th, 1865, was not required for the operation of the road of the said Milwaukee and Minnesota company, and that it could not all be profitably used thereon, that the said road is encumbered with mortgages and judgments far beyond its real value, and that the net income arising therefrom is insufficient to pay the interest on its mortgage debt, and that said *said* Milwaukee and Minnesota Railroad Company is insolvent and irresponsible, and that your respondents were apprehensive and had reason to fear, and did fear, that it was the intention of said Milwaukee and Minnesota Railroad Company to remove a portion of said rolling stock from said road and dispose of the same beyond the jurisdiction of this honorable court; and such your respondents now believe will be the case if the whole of said rolling stock should be placed in their possession and control; and your respondents, further answering, deny that they have been or are guilty of contempt of the orders or authority of this honorable court, or that they, or either of them ever designed or intended to disobey or contemn its authority, but that they were advised by counsel and verily believe that under the circumstances of the case, the said Milwaukee and St. Paul Railway Company were not required in equity and good conscience, or by the spirit and true intent of the order of July 18th, 1865, to make delivery of said rolling stock until the further order of this honorable court; that all your respondents verily be-
807 lieve that said railway company was the owner of said rolling stock, and entitled to its possession, and that the delivery thereof to the Minnesota company would work a great wrong and injury to the said Milwaukee and St. Paul Railway Company, and

seriously discommode the public while no good purpose would be thereby subserved.

Your respondents humbly submit that inasmuch as the ownership and title to said rolling stock is in dispute and unsettled, and can only be determined in the said cause brought and pending for that purpose, and said Minnesota company is now in possession of all that and more rolling stock than can be used to advantage or profitably on its road; that instead of making another for enforcing the said order of July 18th, 1865, it would be safer, more equitable, and tend more to preserve the rights of all parties that the court should make its order requiring each of said companies to give security, to be approved by this court, or a judge thereof, to abide by and perform the final order or decree of this court relative to said rolling stock and to account for its use to the parties finally entitled thereto.

And your respondents humbly pray to be here dismissed with their reasonable costs wrongfully sustained.

The Mil. & St. Paul Ry. Co.

By ALEX. MITCHELL, *Pt.*
AX. MITCHELL,
N. A. COWDREY,
S. MERRILL,
JOHN W. CARY,
DANIEL WELLES, JR.,
A. REASONER.

Milwaukee, April 12, 1866.

JOHN W. CARY,
*Solicitor for Respondents.*

DISTRICT OF WISCONSIN, *ss:*

On this twelfth day of April, A. D. 1866, personally appeared before me Alexander Mitchell, N. A. Cowdrey, Sherburne S. Merrill, John W. Cary, Daniel Wells, jr., and Andrew Reasoner, named in, and who have signed the foregoing answer, and severally made oath that they and each of them had heard read the said answer by them subscribed, and that they knew the contents thereof, and that the same is true of their own knowledge, except as to the matters therein stated to be upon their information and belief, and as to those matters they believed the same to be true.

J. M. MILLER,
*U. S. Commissioner, Dis't of Wisconsin.*

*Exhibit No.* 1.

District court of the United States for the district of Wisconsin, in equity.

GREEN C. BRONSON, JAMES T. SOUTTER, and Sheppard Knapp,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMpany and others, defendants.

The answer of the Milwaukee and Minnesota Railroad Company, Lawrence G. Graham, and Donald D. Scott, three of the defendants in the above-entitled cause, to the petition of the Milwaukee and St. Paul Railway Company, filed in the above-entitled cause on the 6th day of May, A. D. 1863:

These defendants, saving and reserving unto themselves all and all manner of benefit and advantage of exceptions to the many irregularities, uncertainties, and insufficiences of said petition, and protesting that this court has no jurisdiction to hear said petition, for answer thereunto, or unto so much and such part thereof, as is or are material to be by them then answered unto, answering, say:

That they have no knowledge, information, remembrance, or
808 belief as to whether the said Milwaukee and St. Paul Railway Company is a corporation, and can neither admit nor deny the same, but leave such petitioner to such proof in that behalf as it may be able to make.

These defendants admit that Hans Crocker is receiver of the eastern division, so called, of the Milwaukee and La Crosse railroad, so-called, but say that he was not appointed such receiver in the above-entitled cause, but was so appointed in a cause in favor of said Bronson and Sontter, as complainants against the La Crosse and Milwaukee Railroad Company and others, defendants, which action was a suit in equity to foreclose a mortgage on said eastern division, and in a suit in favor of one Howard against said last-named company and others.

The defendants deny that the said mortgage mentioned in the bill of complaint in this cause mortgaged or created a lien upon the whole franchise of said La Crosse and Milwaukee Railroad Company to use, operate, manage, and control said La Crosse and Milwaukee railroad for its entire length from the city of Milwaukee to the city of La Crosse, and deny that said mortgage is prior and superior to all or any claims, liens, or encumbrances on said eastern division, and state that said mortgage did not, in terms, nor was it intended to, create any lien or encumbrance whatever upon said eastern division, of said railroad, or of the franchise of said La Crosse and Milwaukee Railroad Company to use, manage, operate, and control said eastern division, but that on the contrary thereof, the premises, as to franchises conveyed in said mortgage are conveyed only by the following words and description, that is to say: "And all and singular the rights, liberties, privileges, and franchises of said railroad company, of

every kind and description relating to said road," meaning the following roads, that is to say, from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse.

And these defendants deny that said petitioner has in any way become entitled to use, manage, or operate said eastern division of said railroad from Milwaukee to Portage, or any part thereof.

These defendants further say that the said mortgage did not convey or mortgage, and was not intended to convey or mortgage, any of the rolling stock of said La Crosse and Milwaukee Railroad Company pertaining to said eastern division, and these defendants submit that rolling stock is not a franchise, and these defendants, on information, advice, and belief, state that there is no rolling stock covered by the siad mortgage, unless it be the 40 box cars mentioned in the order of the court upon the master's report.

MATT. H. CARPENTER,
*Solicitor.*

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says that he is a director of the Milwaukee and Minnesota Railroad Company, one of the defendants in the above-entitled cause, and makes this verification on its behalf; that he has heard read the foregoing answer, and knows its contents, and that the same is true, of his own knowledge.

A. FLEMING.

Subscribed tand sworn to before me, this 7th day of May, A. D. 1863.

J. M. MILLER, *Clerk.*

Re-sworn to before me, this 11th day of June, A. D. 1863.
EDWARD KENTZ,
*U. S. Com., Dis't Wis.*

And on the same day came the Milwaukee and Minnesota Railroad Company, and Lawrence G. Graham, and Donald D. Scott, by their solicitor, Mr. Carpenter, and filed the following, viz:

809 District court of the United States for the district of Wisconsin, in equity.

GREEN C. BRONSON, JAMES T. SOUTTER KNAPP,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

Here, in court, comes the said Milwaukee and Minnesota Railroad Company, Lawrence G. Graham, and Donald D. Scott, and protesting that the rights of the parties as to rolling stock is already res adjudicata between the parties to this suit, and that this court has no

jurisdiction over or right to hear and determine the said petition of the Milwaukee and St. Paul Railway Company, and protesting that a petition is not the proper proceeding to hear and determine the rights therein set forth:

Pray that in case the said court shall be of opinion that it has such jurisdiction, and that said right as to rolling stock, claimed in said petition, is not already res adjudicata as aforesaid:

That it may be referred to a master or masters to take proofs as to the matter and things set forth, and the rights claimed in and by said petition to, and report thereon.

MATT. H. CARPENTER,
*Solicitor for said Defendants above named except said La Crosse and Milwaukee Railroad Company.*

810 *Exhibit No. 2.*

Circuit court of the United States for the ninth circuit and district of Wisconsin, September term, 1865.

JAMES T. SOUTTER, survivor, &c.,
*vs.*
LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

Motion and petition of Milwaukee and St. Paul Railway Company to modify the order of July 18th, 1865, entered in this cause on confirmation of the auditor's report relative to the delivery of the eastern division to the Milwaukee and Minnesota Railroad Company; John W. Cary for motion.

Circuit court of the United States for the ninth circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor, etc.,
*vs.*
LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

And now comes the Milwaukee and St. Paul Railway Company, by John W. Cary, its solicitor, and moves the court now here for an order modifying the order of July 18th, 1865, entered on confirmation of the auditor's report on motion of the defendant, Milwaukee and Minnesota Railroad Company, by striking from said order the words following, to wit: "and the said Milwaukee and St. Paul Railway Company, its officers, directors, agents, and employees."

Also the following words, to wit: "together with all the rolling stock that was on the whole of the La Crosse and Milwaukee railroad, or belonged or appertained thereto, when the said receiver was appointed, except forty box cars, numbered as follows, viz: 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408," and insert in lieu

of the portion last stricken out, the words "with all the appurtenances, rolling stock, and other property, real and personal,
811 belonging to said division of said road," so as to make the same conform to the mandate of the Supreme Court, and to the rights and equities of the parties, which motion will be founded on the petition of the Milwaukee and St. Paul Railway Company hereto attached, the record and proceedings in this cause, and the record and proceedings in the supplemental bill, and cross bill mentioned in said petition, and the following reasons are assigned for granting said motion:

1st. So that said order may conform to the mandate of the Supreme Court in this cause.

2d. Because the Milwaukee and St. Pail Railway Company was not a party to this suit at the time of granting said order, and not subject or amenable to the orders of this court in this cause, and the same, as to said company, is without jurisdiction and void.

3d. That said rolling stock was not within the jurisdiction and control of this court in this cause, or subject to its order.

4th. Because said supplemental mortgage, mentioned in the annexed petition, covered and included this property, and its lien is prior and superior to the claim or right of said defendant, Milwaukee and Minnesota Railroad Company.

5th. Because said Milwaukee and St. Paul Railway Company is entitled to be treated as a mortgagee in possession under said supplemental mortgage, on the facts stated in its petition.

6th. Because, for the purposes of this proceeding, the title of the Milwaukee and St. Paul Railway Company, under the order of June 12, 1863, in the foreclosure suit of Bronson, Soutter, and Knapp, mentioned in said petition cannot be questioned.

7th. Because said rolling stock was covered by and included in the Bronson, Soutter, and Knapp mortgage of December 31st, 1856, the decree of the 13th of January, 1862, and the marshal's sale and transfer to the Milwaukee and St. Paul Railway Company.

8th. Because said order is contrary to equity and good conscience.

JOHN W. CARY,
*Solicitor, and of Counsel for Milwaukee & St. Paul Railway Company.*

To the honorable judges of the circuit court of the United States for the ninth circuit and district of Wisconsin:

Your petitioner, the Milwaukee and St. Paul Railway Company, respectfully shows:

That on the 31st day of December, 1856, the La Crosse & Milwaukee Railroad Company made their certain mortgage or deed of trust to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, as trustees, to secure bonds to be thereafter issued by said company, whereby they mortgaged to said trustees the line of their railroad and its appurtenances from Madison by way of Portage City to St. Croix river or lake, and from Portage City to La Crosse, together with all

and singular its locomotive engines, cars, and rolling stock, and personal property which had then been or might thereafter be procured for or used on said roads, or either of them, that under said mortgage four millions of dollars in amount of bonds were issued; that default having been made on said bonds, said trustees, on the 5th day of December, 1859, filed their bill in the district court of the United States for the district of Wisconsin, to foreclose said mortgage or deed of trust, and such proceedings were thereafter had that Hans Crocker, esq., was, on the 18th day of May, 1860, appointed receiver therein; that
812 he was subsequently, on the 7th day of June, 1860, appointed receiver of the whole road, subject to his prior appointment in the case of Sebre Howard, and that on the 11th day of June, 1860, he took possession of the whole road by virtue of his said appointments. That such proceedings were thereafter had in said forclosure suit that a final decree of foreclosure and sale was made on the 13th day of January, 1862; and afterwards, and on the 25th day of April, 1863, the premises were sold by the marshal, and the sale duly confirmed, and thereupon the purchasers formed your petitioner under and by virtue of the laws of the State of Wisconsin, and thereupon the whole mortgaged premises so sold were duly transferred to your petitioner as owners. That on the 25th day of April, said decree of foreclosure and sale amounted to the sum of $3,921,291; that the total proceeds of said sale were $2,800,000, and that after deducting said proceeds of sale from the amount due on said decree, there remained due and unpaid on said bonds secured by said mortgage as ascertained and fixed by said decree the sum of $1,129,201, and that said last amount, with interest thereon from the 25th day of April, 1863, still remains due and unpaid on said bonds, and that the whole of said bonds and said indebtedness secured thereby, (excepting about the sum of $25,000, which is mostly in the hands of unknown owners, or the bonds representing the same, have been lost or destroyed,) were, on the said 5th day of May, 1863, sold, assigned, transferred, and delivered to your petitioner, and ever since then have been and now are owned by your petitioner in its own right.

Your petitioner further shows that on the 6th day of May, 1863, your petitioner filed its petition to be let into the possession of the mortgage property so as aforesaid purchased by it, and in and by its petition, specially referred to the proceedings in said foreclosure suit, the sale and conveyance by the marshal and the subsequent conveyance to your petitioner, in and by which said sale and said conveyances all the rolling stock on said La Crosse road when the receiver took possession thereof on the 11th day of June, 1860, was sold, transferred, and conveyed to your petitioner; that the defendant, Milwaukee and Minnesota Railroad Company, appeared and resisted the granting of said petition, and filed an answer thereto specially denying the title of your petitioner to said rolling stock; that said petition was afterwards heard by the said district court, and on the 12th day of June, 1863, an order was made by said district court directing said receiver to let your petitioner into the possession of said railroad from Portage City to La Crosse, and all of said rolling stock that was on said

road when the receiver took possession thereof, a copy of which order is hereto annexed as Exhibit No. 1. And your petitioner shows that it took said rolling stock under and by virtue of the aforesaid proceedings, as the purchaser thereof; that it ever since has held, and now holds said rolling stock as such purchaser, claiming to be the owner thereof, and insists that the proceedings aforesaid, and especially the proceedings on said petition and the order so as aforesaid made, are an adjudication upon the right, title, and claim of the said defendant, Milwaukee and Minnesota Railroad Company, to said rolling stock, and while it remains in full force and unreversed cannot be questioned or impeached by said defendant, Milwaukee and Minnesota Railroad Company, in this suit or any other collateral proceeding.

Your petitioner further shows that it so being in the possession of said rolling stock, and claiming to be the owner thereof, the said defendant, Milwaukee and Minnesota Railroad Company, on the 11th day of August, exhibited its supplemental bill of complaint to said foreclosure suit in this court against your petitioner, and James
813 T. Soutter and Shepard Knapp, survivors of Greene C. Brown, deceased, trustees as aforesaid, and William Wallace Pratt and William H. White, the purchasers at said foreclosure sale; that in and by said supplemental bill of complaint said defendant set out its title to the La Crosse and Milwaukee railroad, its rolling stock, and personal property, by virtue of a mortgage given by said La Crosse and Milwaukee Railroad Company on the 21st day of June, 1858, to William Barnes, the foreclosure thereof, and sale under the power and the organization, under the statute of Wisconsin, by the purchaser at said sale of the said defendant, Milwaukee and Minnesota Railroad Company, and that thereby said last-named company succeeded to all the property, rights, privileges, and franchises which were of the said La Crosse and Milwaukee Railroad Company on the 21st day of June, 1858; said supplemental complaint then set forth the foreclosure proceedings first above mentioned, and the organization of your petitioner; that your petitioner was in the possession of all the rolling stock of which the receiver took possession on the 11th day of June, 1860, claiming it as owner under said foreclosure, purchase, and organization as aforesaid, and then prayed, among other things, that said defendant, Milwaukee and Minnesota Railroad Company, might be declared by the decree of this honorable court the owner of all the rolling stock that was on the whole La Crosse and Milwaukee railroad at the time of the appointment of the receiver, except forty box cars specially mentioned and described, and that an account might be taken of the use of said rolling stock by said Milwaukee and St. Paul Railway Company, and that the said last-named company might be enjoined from using or in any manner interfering with said rolling stock, and for general relief; that process of subpœna was issued out of and under the seal of this honorable court, and such proceedings had that the defendants named in said supplemental bill of complaint appeared in said suit and answered, and the same is now pending and undetermined in this court, as by the said

bill and other pleadings and proceedings in the said cause now remaining filed as of record in this court, reference being thereunto had, will more fully and at large appear, and to which, for greater certainty, your petitioner prays leave to refer.

Your petitioner further shows that, as it is advised and believed, said mortgage so as aforesaid given to said Bronson, Soutter & Knapp, was intended to cover, and in fact did cover and include all of the locomotives, cars, engines, tools, and personal property which the said La Crosse and Milwaukee Railroad Company then had, or which they might thereafter acquire, and that it did in fact cover and include, and was intended to cover and include, all the rolling stock and equipments which were on the road of said company on the 11th day of June, 1860, of which the receiver took possession; yet that after the giving of said mortgage said company became embarassed in its financial operations, and some doubt and apprehension were felt by the bondholders under said mortgage as to whether said mortgage did in fact cover and include all the iron, locomotives, cars, engines, tools, and other personal property belonging to said company, and in order to solve said doubt, and to secure said property to the bondholders holding bonds issued under said mortgage, so as aforesaid executed, application was made to the said La Crosse and Milwaukee Railroad Company to execute a supplemental mortgage thereon to said trustees as aforesaid for the further security of said bonds; that in pursuance of said request, and of the covenants and agreements contained in said indenture and mortgage so as aforesaid given to said trustees, said La Crosse and Milwaukee Railroad Company did, on the 4th day of September, in the year 1857, by
814 resolution of its board of directors, authorize and direct the execution of such supplemental mortgage; and afterwards, and on the same day, said La Crosse and Milwaukee Railroad Company, in pursuance of said resolutions, and in consideration of the premises, and of one dollar to it in hand paid by said trustees, did grant, bargain, sell, convey, and confirm unto said trustees, Bronson, Soutter & Knapp, all and singular, about eleven thousand tons of iron rails, being all the iron rails purchased for and belonging to the said company, and lying at Milwaukee and elsewhere, along the line of the road of said company, or wherever the same or any portion thereof might be, and not actually laid down on the track thereof, and all and singular the locomotives, cars, engines, tools, materials, lumber, office furniture, and personal property of every description, belonging to the said company, wherever the same might be: To have and to hold the same to said trustees, their successors and assigns, upon the like trusts, terms, and conditions as are in the said mortgage or trust deed of December 31st, 1856, contained, with all the powers and authority therein granted, which said mortgage or deed of trust so as aforesaid executed, was afterwards, and on the fifth day of September, 1857, duly recorded in the office of the secretary of state of the State of Wisconsin, as a mortgage, a copy of which said mortgage, and the resolution passed by the board of directors of said La Crosse and Milwaukee Railroad Company, authorizing the execution thereof, is hereto attached as Exhibit No. 2.

That at the time of the execution of said mortgage, on the 4th day of September, 1857, but $1,991,000 in amount of bonds had been issued under said mortgage of December 31st, 1856, and that after the execution, delivery, and record of said mortgage of September 4th, 1857, there was issued the further amount of bonds under said mortgages of $2,009,000, making in all issued under said mortgage the sum of $4,000,000.

That on the said 4th day of December, 1857, said La Crosse and Milwaukee Railroad Company was the owner and in the possession of about eleven thousand tons of iron rails, and of all the locomotives, cars, engines, tools, and all personal property mentioned and described in the said bill of complaint, of which said Hans Crocker, esq., took possession, as receiver, on the 11th day of June, 1860; and that in and by said last-mentioned mortgage or deed of trust, the whole of said iron, locomotives, cars, engines, tools, and personal property were conveyed to said trustees as security for the payment of the bonds issued under the mortgage or deed of trust so as aforesaid given to said trustees, and bearing date December 31st, 1856, as aforesaid; that said iron rails were afterwards laid in the track of said railroad, a part thereof on the eastern division and the remainder on the western division, and said rolling stock and other property was, from the giving of said mortgage of September 4th, 1857, until it was taken possession of by the said receiver, used on said road from Milwaukee to La Crosse, and that said mortgage last named is now, and ever since has been, a lien and encumbrance thereon, to the full amount of said bonds now remaining unpaid.

Your petitioner further shows, that in its answer to said supplemental bill of complaint, it has set up its right and title to said rolling stock under said mortgage so as aforesaid given by Bronson, Soutter, and Knapp, on the 31st day of December, 1856, the foreclosure thereof and sale by the marshal, and organization and conveyance to your petitioner and the aforesaid order of the said district court, giving your petitioner the possession thereof, under said foreclosure sale and purchase; and that in addition thereto your petitioner has set up the supplemental mortgage so as aforesaid given to said trustees,

815 that your petitioner is the owner of all the bonds issued under said mortgage so as aforesaid given on the 31st day of December, 1856, except the sum of about $25,000 in amount, and that the amount due and unpaid on said bonds, as fixed by said decree, is the sum of about $1, 29,201, with interest from April 25th, 1863; that your petitioner is in possession of all the rolling stock of which the receiver took possession on the 11th day of June, 1860, under the aforesaid order of the district court, made June 11th, 1863, and that all of said rolling was owned by and belonged to said La Crosse and Milwaukee Railroad Company on the 4th day of September, 1857, when said mortgage of that date was made by said company; and that under the circumstances your petitioner must be regarded and treated as a mortgagee in possession of said property, and that its possession thereof cannot be disturbed by the defendant, Milwaukee and Minnesota Railroad Company, except by a bill to redeem said property from said mortgage.

That said James T. Soutter and Shepard Knapp, survivors of Greene C. Bronson, trustees, have answered said supplemental bill of complaint setting up the mortgage or deed of trust of December 31st, 1856, the foreclosure thereof, the marshal's sale, the organization of and transfer to your petitioner, and the aforesaid order of the district court placing your petitioner in possession; and also setting up said mortgage or deed of trust of September 4th, 1857, their rights under the same; that said La Crosse and Milwaukee Railroad Company were the owners of all the rolling stock of which the receiver took possession on the 11th day of June, 1860, and now in the possession of your petitioner, on the fourth day of September, 1857, when said mortgage or deed of trust of that date was executed, and insisting that if said rolling stock was not included in the decree of January 13th, 1862, and sold by the marshal on the 25th of April, 1863, that it is covered by and included in the mortgage of September 4th, 1857, aforesaid, and should be subjected to the payment of the balance remaining due and unpaid on the bonds so as aforesaid issued under the mortgage of December 31st, 1856. And that said Soutter and Knapp, as survivors of said Greene C. Bronson, trustees, have also filed a cross bill to said supplemental bill, setting up the matters contained in their answer aforesaid, that by the mistake or inadvertence of the counsel who drew and prepared the original bill of foreclosure of the mortgage of December 31st, 1856, and without the knowledge of said trustees, said mortgage of the 4th of September, 1857, was not pleaded or set up in said bill of foreclosure, and that it has never been foreclosed, that it now remains in full force, uncancelled and unsatisfied, and is a lien upon all of said rolling stock, prior and superior to the right or claim of said Milwaukee and Minnesota Railroad Company, and praying for a foreclosure of said mortgage and for other relief.

That said supplemental bill, the answers thereto, and said cross bill are now pending and undetermined in this court, as by the record of said suit and the proceedings therein now remaining of record in this court, reference being thereunto had, will more fully and at large appear, and to which, for greater certainty, your petitioner prays leave to refer.

Your petitioner further shows that it is not a party, either complainant or defendant, in this action, as was decided by this court at the April term, 1864, and that it has no connection with or relation to it, except what arose from and grew out of the order of the 12th of June, 1863, entered by the said district court in this cause and in this court in the case of Sebre Howard *vs.* La Crosse and Milwaukee Railroad Company and others, and in the case of Bouton *vs.* the same company and others, modifying the order appointing Hans Crocker, esq., receiver in said causes, so as to allow your petitioner to operate the eastern division of the La Crosse and Milwaukee
816 railroad, a copy of which order is hereto annexed as Exhibit No 3. That under and by virtue of said orders your petitioner was let into the possession of said eastern division of said La Crosse and Milwaukee railroad, and of that portion of the rolling stock purchased by the receiver belonging to said eastern division, but of no

other property or rolling stock whatever; and from and after the 12th day of June, 1863, until the first day of May, 1864, your petitioner, under and by virtue of said orders, operated said eastern division of said railroad as aforesaid, when said orders were rescinded by this honorable court; and thereupon your petitioner returned said road and rolling stock as aforesaid received to said Hans Crocker, receiver.

Your petitioner further shows that on the 28th day of April, 1864, an order was entered in this cause, as follows, to wit:

"This day ordered by the court, that the receiver file in this court a continuous monthly account of his receipts and disbursements as receiver from the time of his appointment, including the receipts and disbursements as receiver from the time of his appointment, including the receipts and disbursements of the Milwaukee and St. Paul Railway Company from the 12th of June, 1863, by the first day of June next, and that any person interested may examine the same and file exceptions thereto. And that H. L. Palmer, esq., be, and is, appointed an auditor to report on the same to the next term of this court."

That in pursuance of said order said receiver filed his continuous monthly account of his receipts and disbursements, including the receipts and disbursements of your petitioner, and that said report was excepted to, and that your petitioner appeared before said auditor to maintain said account so far as it related to your petitioner, but for no other purpose whatever; and that afterwards your petitioner appeared before this honorable court for the same purpose and filed exceptions to the report of said auditor, but that your petitioner never made any other appearance in this cause, and never had any other connection therewith, except as above; that there were no pleadings before said auditor, or in this court, so far as your petitioner was concerned, and no issue as to your petitioner's right and title to said rolling stock, and no opportunity for your petitioner to contest the claims of said Milwaukee and Minnesota Railroad Company to said stock, or to establish and maintain the rights and claims of your petitioner.

That said supplemental bill and cross bill, and the answers thereto, put that question directly in issue, and that that proceeding is the proper forum for the contestation of that title, but that it cannot be litigated in this suit.

Your petitioner further shows that said auditor reports that the order of the 12th of June, 1863, hereto attached as Exhibit No. 1, still remains in full force, and not reversed or rescinded, and that said rolling stock remained in the possession of your petitioner by virtue thereof: and then further reports "that under the adjudications made by the district and circuit courts in this case, and in the case of Bronson, Soutter, and Knapp against the La Crosse and Milwaukee Railroad Company, and others, and by the Supreme Court of the United States in the case of the Milwaukee and Minnesota Railroad Co. *vs.* James T. Soutter, survivor, &c., that all of said rolling stock that was on said road on the 11th day of June, 1860, except

forty box cars, belongs to the owners of the eastern division of said road; and further reported that your petitioner should pay to said receiver the sum of $209,840 94 for the use of said rolling stock;" and that your petitioner excepted to said finding as to the ownership of said rolling stock, and to the amount reported as due the receiver for the use thereof, which exceptions were overruled, and your petitioners thereupon appealed to the Supreme Court and procured a supersedeas thereon.

817 And your petitioner further shows that on the confirmation of said report, the defendant, Milwaukee and Minnesota Railroad Company, procured an order to be entered in pretended compliance with the mandate of the Supreme Court, which your petitioner shows is not in compliance with said mandate, and as your petitioner is advised and believes is arbitrary and unjust, and improvidently and unadvisedly granted. That said mandate directs "that in case the amount due the complainants be paid into court, the receiver should be discharged, and the railroad from Milwaukee to Portage City with all the appurtenances, rolling stock, and other property, real and personal, belonging to said division of said railroad to be delivered by said receiver to the Milwaukee and Minnesota railroad," upon certain conditions.

But said order, notwithstanding your petitioner was not a party to said suit, directs not only the receiver but your petitioner to deliver the eastern division and its appurtenances and rolling stock, but also the rolling stock and property delivered to your petitioner, under its aforesaid purchase, and which your petitioner claims to own in its own right, and which, if your petitioner does not absolutely own in its own right, it is entitled to the possession of as mortgagee in possession as above set forth. Your petitioner was advised and believed, and is still advised and believes, that its appeal so as aforesaid taken, and the supersedeas allowed thereon operated as a stay, not only of the payment of the money so reported due the receiver, but also of the delivery of said rolling stock; but that it is now informed that said defendant (Milwaukee and Minnesota Railroad Company) insists that in case it pays the amount due the complainant that it will be entitled to the delivery to it of all the rolling stock which was on said railroad when the receiver took possession thereof, except forty box cars specially mentioned; and your petitioner shows that said order is being unjustly and improperly used with a view to injury and oppress your petitioner, and with that view said Milwaukee and Minnesota Railroad Company have caused to be published in two of the daily newspapers of Milwaukee, and in the papers of Chicago and New York, the false, scandalous and malicious libel and notice hereto attached and marked Exhibit No. 4.

Your petitioner therefore prays that said order of July 18th, 1865, entered on the confirmation of said auditor's report, on motion of the defendant, Milwaudee and Minnesota Railroad Company, may be modified by striking from said order the words following, to wit: "and the said Milwaudee and St. Paul Railroad Company, its officers, directors, agents, and employees."

Also the following words, to wit: "together with all the rolling stock, that was on the whole of the La Crosse & Milwaukee railroad, or belonged or appertained thereto when the said receiver was appointed, except forty box cars, numbered as follows, viz: 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408," and insert in lieu of the portion last stricken out the words, "with all the appurtenances, rolling stock, and other property, real and personal, belonging to said division of said road" so as to make it conform to the mandate of the Supreme Court and to justice and equity between the parties.

Your petitioner further shows that but a small part of said rolling stock in addition to that purchased by the receiver and belonging to said eastern division could be advantageously used on said eastern division, while there is great and pressing need for its use on your petitioner's road, and that its removal therefrom would greatly
818 discommode the public, and be a great and serious damage, not only to your petitioner, but to the whole community who are dependent on your petitioner's railroad to transact their business and market their crops.

And your petitioner, as in duty bound, will ever pray, &c.

JOHN W. CARY,
*Solicitor and of Counsel for Petitioner.*

DISTRICT OF WISCONSIN, *ss:*

On this day of September, A. D. 1865, personally appeared before me Alexander Mitchell, and made oath that he is one of the officers of the Milwaukee and St. Paul Railway Company, the petitioner named in the foregoing petition, to wit: its president; that he has heard read said petition, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be upon the information and belief of said petitioner, and as to those matters he believes it to be true.

*Exhibit No.* 1.

Order of June 12th, 1863—In western division—Foreclosure cause.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the City of Milwaukee, in said district of Wisconsin, on the first Monday (being the fifth day) of January, A. D. 1863; present, the Honorable Andrew G. Miller, judge of said court, presiding.

On the eighteenth day of said term, to wit: on the 12th day of June, A. D. 1863, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp, trustees,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company, J. Albert Helfenstein, trustee, *et als.*
} In equity.

On consideration of the said petition of the Milwaukee and St. Paul Railway Company, and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee and St. Paul Railway Company all and singular the railroad between the city of La Crosse and Portage City, its roadbed and tracks, with its depots, station houses, and all other property belonging to said railroad between the said points; and the forty box cars mentioned and described in the decree.

819 And also the share or proportion of the rolling stock and personal property purchased by the receiver, as mentioned in the decree. And also, subject to other or previous liens or claims, the possesion of the rolling stock on hand when the receiver took the same under the order of the court; and it is further ordered by the court that the said receiver be, and hereby is, discharged as such from the management and control of the said western division of said railroad under appointment in this case, subject, however, to the final settlement of his accounts, and subject to the orders made or to be made in this case and in the other cases in which he was appointed or may hereafter be appointed.

*Exhibit No.* 2.

At a meeting of the board of directors of the La Crosse and Milwaukee Railroad Company, held at the office of the company, in the city of Milwaukee, on the 4th day of September, A. D. 1857, the following proceedings were had:

Mr. Palmer presented the following additional deed of trust and resolution, authorizing the execution of the same by the president and secretary, which resolution was adopted by the board:

Resolved, that the president and secretary be authorized and directed to execute to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, in behalf of this company, a further deed of trust or mortgage, of which the following is a copy. viz:

This indenture, made and entered into this 4th day of September, in the year of our Lord one thousand eight hundred and fifty-seven, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, parties of

the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, all of the city and State of New York, parties of the second part.

Whereas the said parties of the first part did, on the 31st day of December, in the year one thousand eight hundred and fifty-six, duly execute and deliver to the said parties of the second part, as trustees, a deed of trust, bearing date on that day, wherein and whereby the said parties of the first part, for the purpose of securing the payment of certain moneys which the said party of the first had determined to borrow.

Stipulated and provided for the issue of the bonds of the said La Crosse and Milwaukee Railroad Company for ten millions of dollars of the date, tenor, and description of said deed of trust particu-
820 larly set forth, and payable, principal and interest, as therein provided; and whereas the said railroad company in and by the said deed of trust granted, bargained, sold, conveyed, and confirmed unto the said parties of the second part all and singular the several tracts of land which then was or thereafter might be or constitute the site of the roadway, turn-out, engine-houses, workshops, depots, and other buildings of the said company, and other lands, buildings, and estate and property, real and personal and mixed, therein specially and particularly described, which conveyance was, in and by said deed of trust, declared to be and was made to the said parties of the second part and the survivors and survivor, successors and successor of them, and their and his heirs and assigns, in trust and upon the trusts, terms, and conditions therein particularly expressed.

And whereas the said parties of the first part did, in and by the said deed of trust, covenant and agree to and with the said trustees, the said parties of the second part, that the said railroad company would, from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustees, or to their successors in the said trust, all such further conveyances and assurances, and would do all such further acts as might be either necessary or proper for more effectually vesting in the said trustees all such right, title, interest, or estate, both legal and equitable, as said railroad company then had or may thereafter acquire of, in, and to all and every part of the property thereby conveyed, or intended to be conveyed.

And whereas the said railroad company had, at the time of the execution of the said deed of trust, or have since acquired certain property which was conveyed, or intended to be conveyed thereby, and of which a further conveyance is deemed proper for more effectually vesting in the said trustees all the title, right, interest, and estate, legal or equitable, which the said company then had or have since acquired thereby, (therein.)

Now, therefore, know all men by these presents, that the said parties of the first part, in pursuance of the covenants and stipulations in the said deed of trust contained, and in consideration of the premises, and of one dollar to them in hand paid by said parties of the second part, the receipt whereof is hereby acknowledged, have

granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm, unto the said parties of the second part all and singular about eleven thousand tons of iron rails, being all the iron purchased for and belonging to the said company, and lying at Milwaukee and elsewhere along the line of the road of the said company, or wherever the same or any portion thereof may be and not actually laid down in the track thereof, and all and singular the locomotives, cars, engines, tools, materials, lumber, office furniture, and personal property of every description belonging to said company wherever the same may be.

To have and to hold all and singular the property hereby conveyed or intended to be conveyed to the said parties of the second part, and the survivors or survivor of them, their successors and successor, and their and his heirs and assigns, upon the like trust terms, trusts, and conditions as are in the said deed of trust contained, and all the power and authority granted to the said parties of the second part, in and by the said deed of trust, in relation to the property conveyed thereby, and in relation to the sale, conveyance, and disposal thereof, and in relation to the disposition and application of the proceeds of such property in case of sale, are hereby conferred upon, granted to, and vested in the said parties of the second part in relation to the property hereby conveyed, as fully and effectually as if the
821 property hereby conveyed had constituted a part of the roadway of the said company described in the said deed of trust at the date thereof.

And the said parties of the second part are hereby charged with all the duties in relation to the property hereby conveyed, and the sale and disposition thereof and of the proceeds thereof, in case of sale thereof, with which they are charged in relation to the property conveyed or intended to be conveyed by the said deed of trust; and the said parties of the second part may, and they are hereby authorized and required to treat the property hereby conveyed in the same manner and to hold the same upon the same terms, trusts, and conditions, and for the same purposes as the property mentioned in the said deed of trust, and not otherwise; and may take possession thereof and sell and dispose of the same in the same manner, at the same time, and upon the same conditions as they may take possession of and sell and dispose of the property in the said deed of trust mentioned and as a part thereof, and not otherwise; and it is hereby declared to be the object and intention of these presents and of the parties hereto to subject the property hereby conveyed, or intended to be conveyed, and every part thereof to the operation of said deed of trust, and each and every stipulation and covenant therein contained, as fully and effectually to all intents and purposes as if the said property hereby conveyed, or intended to be conveyed, had at the time of the execution of the said deed of trust constituted a part of the property thereby conveyed and had been embraced in and conveyed thereby.

In witness whereof the said railroad co. has hereto affixed its cor-

porate seal and caused the same to be subscribed by its president and secretary, in the day and year first above written.

[L. S.] BYRON KILBOURN,
*President.*
J. HADLEY,
*Sec'ry of the R. R. Co.*

In presence of—
H. M. PEABODY,
E. P. WHALING.

STATE OF WISCONSIN, *Milwaukee County, ss:*

On the 4th day of September, in the year one thousand eight hundred and fifty-seven, before me came Byron Kilbourn, the president of the La Crosse and Milwaukee Railroad Company, with whom I am personally acquainted, and who, being by me duly sworn, says that he resides in the city of Milwaukee, in said county, and that he is the president of the La Crosse and Milwaukee Railroad Company, that the seal affixed to the foregoing indenture is the common and corporate seal of the said railroad company, and was affixed to the said indenture by order of the board of directors of said company, for the uses and purposes therein expressed; and that he, by like order, did subscribe his name thereto as president of said company; and that Jackson Hadley, as secretary of said company, subscribed his name thereto by like order and authority.

H. L. PALMER,
*Notary Public, Milwaukee County,*

And to affix thereto the corporate seal of the company, and to cause the same to be recorded in the office of the secretary of state, and to file copies thereof whenever necessary to render the same an effective security, and to deliver the same, when so executed and recorded, to the said trustees.

822 *Exhibit No.* 3.

Order, June 12, 1863, in eastern division foreclosure cause, putting Milwaukee and St. Paul Railway Company in possession, and order of April 28, 1864, vacating the same.

United States district court.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

JUNE 12TH, 1863.

A petition in writing of the Milwaukee and St. Paul Railway Company having been presented to the court and filed in the case of Greene C. Bronson, James T. Soutter, and Shephard Knapp, against the La Crosse and Milwaukee Railroad Co. and others, setting forth

in substance that, in pursuance of a decree of this court in that case, the western division of the La Crosse and Milwaukee railroad, between La Crosse and Portage City, has been sold, and that said sale was confirmed and perfected; and that said Milwaukee and St. Paul Railway Co. is a corporation organized under the laws of the State, as grantees under said sale, and praying to be allowed to operate the whole line of road between La Crosse and Milwaukee as a continuous road, as directed and authorized by the act incorporating the La Crosse and Milwaukee Railroad Co.; and the said petition having been argued by Messrs. Cary and Lynde in support thereof, and by Messrs. Hubbell and Carpenter on behalf of Charles Howard, a judgment creditor of the La Crosse and Milwaukee Railroad Co., who is prosecuting a judgment creditor's bill, and of the Milwaukee and Minnesota Railroad Co., in opposition thereto; and the court being satisfied that the policy of the State and the interests of the public and of the creditors of the La Crosse and Milwaukee Railroad Co. require that the court should not continue further to operate, by its receiver, any part of the said railroad between La Crosse and Milwaukee, but that the whole line of said road should be operated without interruption or embarrassment by a responsible corporation; and the court being satisfied that its possession and control by a receiver of the eastern division, between Portage City and Milwaukee, might affect the rights of the public, and embarrass the free and proper operation of the whole road as required by the original grant or charter, and also prejudice the interests of creditors of the La Crosse and Milwaukee Railroad Co. And it being represented to the court that persons interested in the Milwaukee & St. Paul Railroad Co. own or control bonds included in the mortgage to these complainants, and the subject of this suit, to the amount of four hundred and seventy-eight thousand dollars, being nearly one-half of the whole amount of said mortgage.

It is thereupon ordered by the court that the order appointing a receiver in the case be modified in the manner following, subject to any further or other order rescinding, altering, or modifying this order now here made: That the receiver let the said Milwaukee and St. Paul Railway Co. into the possession of the eastern division of the La Crosse and Milwaukee Railroad from Portage City to Milwaukee, with the appurtenances and property and rolling stock thereto belonging. And that the said Milwaukee and St. Paul Railway Co., subject to the further order or orders of the said court, operate said eastern division of said railroad in connection with the said western division thereof, so that one continuous line of railroad be-
823 tween La Crosse and Milwaukee may be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Co., without hindrance, interruption or diversion, the same as if the whole line of road continued to be in one company in pursuance of said charter, and not otherwise.

And it is further ordered by the court that the said Millwaukee and St. Paul Railway Co. shall at all times allow and permit the receiver, or such other persons as may be at any time appointed

for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Co., and of its board of directors, in relation to the business and operation of the whole line of road, and that the said railway co. shall, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of the net revenues of the said railroad. And that the said receiver make monthly returns as heretofore of his accounts into court, and disburse the moneys by him received from time to time in the payments of liens and debts of the said La Crosse and Milwaukee Railroad Co., according to their priorities and equities.

And it is further ordered by the court that before the said Milwaukee and St. Paul Railway Co. be permitted to have possession under this order, the said company, by its constituted officers, shall enter into bond to the United States for the use and benefit of all interested, with sureties to be approved by the court, in the penalty of one hundred thousand dollars, conditioned that the said company will faithfully comply with this order of court this day made, and any subsequent orders relating to the operation and management of said railroad between La Crosse and Milwaukee, and will keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La Crosse and Milwaukee Railroad Co., and shall make monthly returns and pay over the net revenues of said road, according to this order.

*Exhibit No.* 4.

Notice to all railroad companies, owners, or manufacturers of rolling stock, and all others whom it may concern:

OFFICE OF THE MILWAUKEE & MINNESOTA RAILROAD COMPANY,
*New York, August 12th*, 1865.

Take notice, that whereas, at the July term of the United States circuit court for the district of Wisconsin, held in the city of Milwaukee, orders were made by the said court in obedience to the mandate of the Supreme Court of the United States, directing all the rolling stock (except forty box cars) that was on the road of the La Crosse and Milwaukee Railroad
824 Company, when the receiver took possession of the same, and also the eastern division of said road, to be delivered ered to the Milwaukee and Minnesota Railroad Company, on the payment of certain interest—the said rolling stock and the said eastern division being now in the possession of parties styling themselves

the Milwaukee & St. Paul Railway Company: And whereas the said Milwaukee and St. Paul Railway Company has been, since the first day of September, 1864, using the said rolling stock to divert the travel and traffic to a competing route to the great injury of the Milwaukee and Minnesota Railroad Company, owner of the said rolling stock and the eastern division And whereas, a suit for damages against the directors of the said Milwaukee & St. Paul Railway Company has been commenced by the Milwaukee and Minnesota Railroad Company, and said last-named company will shortly, in obedience to the orders above mentioned, pay into court the interest as directed, and take possession of the said rolling stock and road, in which event the said Milwaukee and St. Paul Railway Company will be left with little or no equipment, and threatens to lease its road, or lease, or hire, or in some other way procure rolling stock to be employed in the transportation of freight and passengers over the road formerly known as the western division of the La Crosse and Milwaukee railroad, and thence by way of Watertown to Milwaukee, thus diverting the travel and traffic from the road of the Milwaukee and Minnesota Company, the successor to, and owner of all the rights, liberties, privileges, and franchises of the late La Crosse and Milwaukee Railroad Company, and as such successor and owner, alone legally entitled to the exercise of the rights, liberties, privileges, and franchises, particularly the transportation of freight and passengers over the said western division from La Crosse to the city of Portage, and from thence, by way of the road known as the eastern division of the late La Crosse and Milwaukee Railroad Company, to the city of Milwaukee: Now, therefore, notice is hereby given to all railroad companies, owners or manufacturers of rolling stock, and all whom it may concern, that the Milwaukee and Minnesota Railroad Company, as sole owner of the franchise to run through trains on the said western division, will hold all parties leasing or hiring to the said Milwaukee and St. Paul Railway Company, or in any manner aiding or abetting said last-named company in infringing on the legal rights of the Milwaukee and Minnesota Railroad Company, owner of the franchises, by furnishing rolling stock to be used as aforesaid, as jointly liable with the said Milwaukee and St. Paul Railway Company for all damages to the Milwaukee and Minnesota Railroad Company occasioned by the diversion of the traffic and travel from its lawful channel over the road of the aforesaid Milwaukee and Minnesota Railroad Company.

By order of the executive committee.

A. C. GUNNISON, *President*.

825 *Exhibit No. 3.*

Detailed statement of rolling stock delivered to Milwaukee and Minnesota Railroad Company.

Engines Nos. 1, 2, 7, 10, 11, 12, 14, 16, 20, 22, 24, 25, 29, 30, 31-36, New No.—15,

Baggage cars—Nos. 1, 4, 6, 7—4.

Mail and express cars—Nos. 1, 2, 3—3.

Caboose-cars—Nos. 1, 2, 3, 4, 5, 6—6.

Passenger coaches—Nos. 1, 7, 13, 15, 17, 18, 19, 20—8.

Platform cars—Nos. 9, 245, 37, 207, 231, 83, 7, 109, 77, 157, 223, 117, 93, 143, 161, 101, 107, 187, 119, 85, 23, 149, 97, 121—24.

Box cars—Nos. 10, 524, 602, 674, 744, 828, 1,206, 102, 526, 60, 676, 750, 830, 1,210, 134, 534, 606, 678, 754, 832, 1,238, 138, 542, 608, 682, 756, 834, 1,230, 170, 546, 610, 684, 758, 838, 1,242, 214, 548, 612, 686, 760, 842, 1,286, 242, 550, 614, 688, 762, 844, 1,290, 252, 552, 616, 690, 766, 846, 1,320, 318, 554, 618, 692, 768, 848, 1,324, 328, 556, 620, 694, 774, 850, 1,342, 558, 622, 696, 776, 854, 1,352, 446, 562, 624, 698, 782, 856, 1,354, 450, 564, 626, 700, 786, 858, 1,370, 452, 566, 628, 702, 788, 868, 1,390, 456, 568, 630, 704, 790, 874, 1,442, 458, 570, 632, 706, 794, 876, 1,504, 466, 572, 638, 708, 796, 1,514, 468, 574, 644, 710, 798, 1,520, 472, 576, 646, 712, 800, 916, 1,526, 476, 578, 650, 716, 802, 928, 1,588, 478, 580, 654, 718, 804, 944, 1,596, 480, 582, 656, 720, 806, 958, 1,614, 492, 584, 658, 722, 808, 960, 1,624, 494, 586, 660, 724, 810, 1,008, 1,632, 496, 588, 662, 726, 812, 1,026, 1,684, 506, 590, 664, 728, 814, 1,098, 1,708, 512, 592, 666, 730, 818, 1,102, 514, 594, 668, 738, 820, 1,134, 516, 598, 670, 740, 822, 1,184, 518, 600, 672, 742, 824, 1,192, 203..

Filed April 13, 1866.

826 Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE & MINNESOTA RAILROAD Company.
*vs.*
THE MILWAUKEE & ST PAUL RAILWAY Company and others.
} Suit by supplemental bill.

JAMES T. SOUTTER *et al.*,
*vs.*
THE MILWAUKEE & MINNESOTA Railroad Company.
} Cross bill.

The respective parties in this cause hereby stipulate, as matter of accommodation to the clerk of this court in making up the voluminous record on the appeals taken, that said clerk shall have, until the 1st day of January, A. D. 1867, to perfect and transmit the said record or records, on the several appeals in this cause; that neither party shall move in the Supreme Court to dismiss either of said appeals, because said record is not sooner sent, or otherwise take any objection thereto in said Supreme Court or otherwise; that this stipulation shall be filed in this court, be considered a part of the record, and be copied therewtih by said clerk.

Dated November 20, 1866.

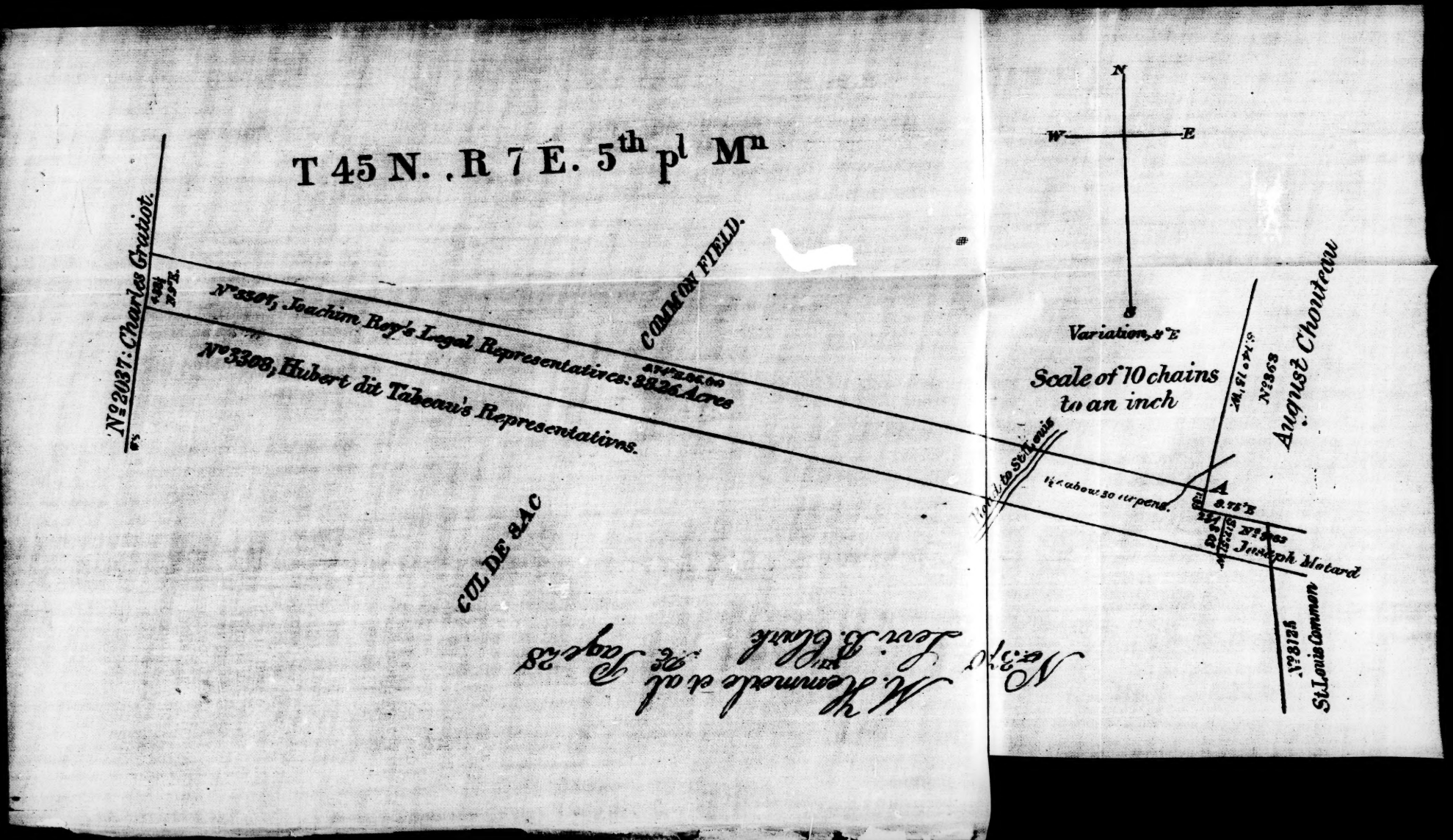
MATT. H. CARPENTER,
*Sol. for Min. & Mil. R. R. Co.*
JOHN W. CARY,
*Sol. for M. & St. P. Co. & Soutter & Knapp.*

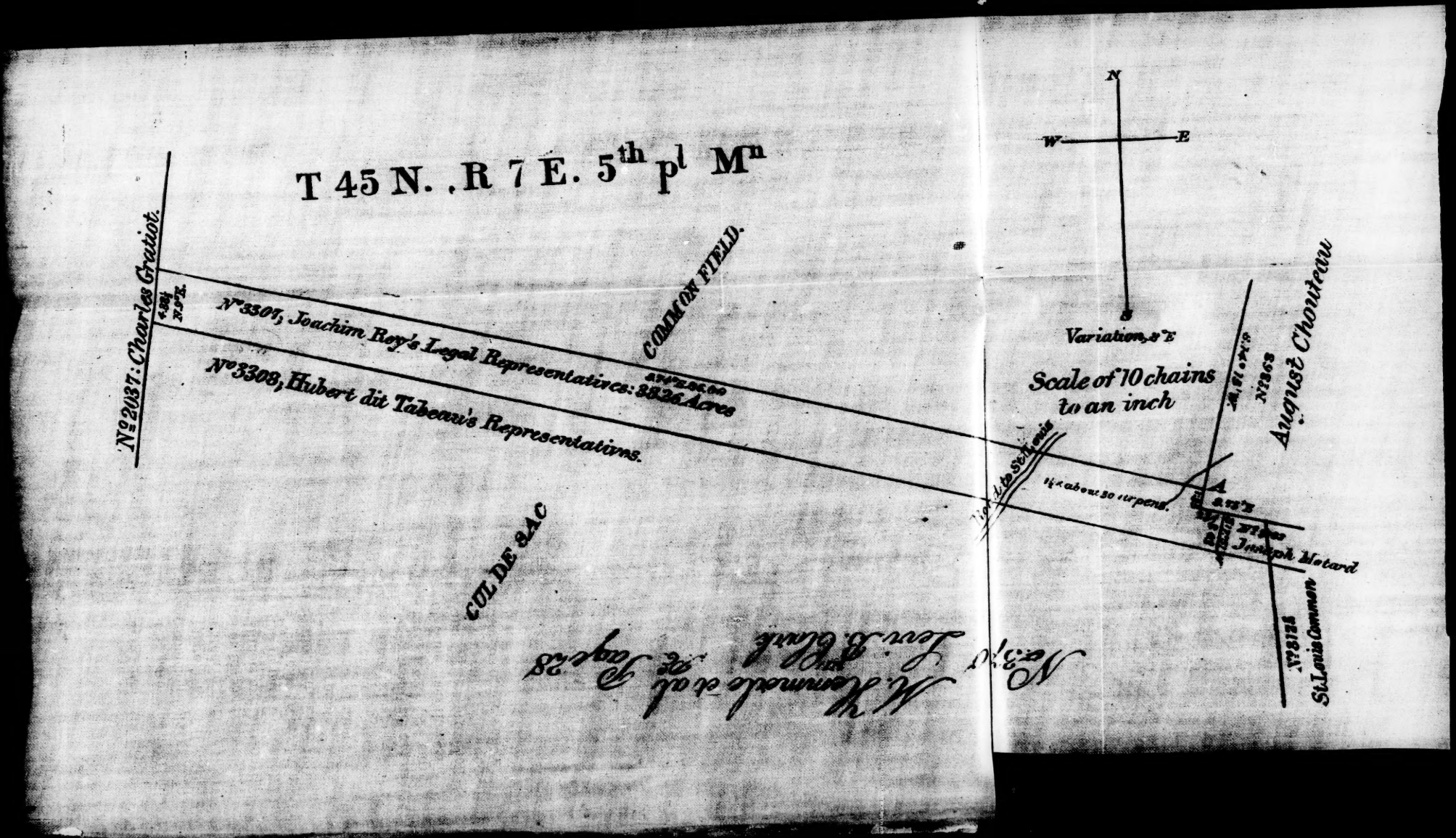
UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

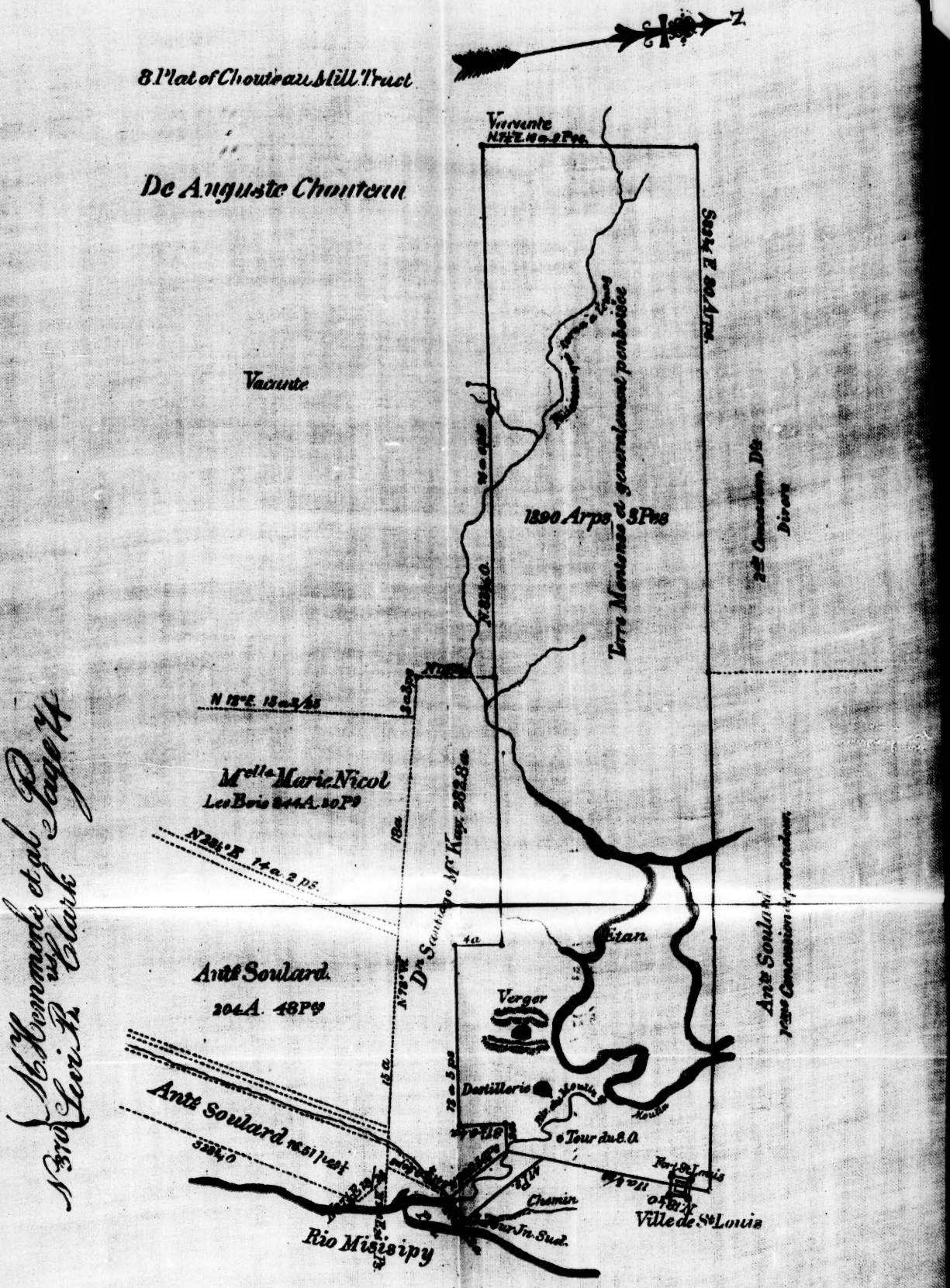
I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals and are correct transcripts therefrom, and of the whole thereof now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand, and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this 26th day of December, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the said United States the ninety-first.

[L. S.] A. SCOTT SLOAN, *Clerk.*
By JAMES McFARLIN, *Deputy.*


T 45 N. . R 7 E. 5th pl Mn
N
W
E
S
Variation, 8°E
Scale of 10 chains to an inch
No 2037: Charles Gratiot.
No 3307, Joachim Roy's Legal Representatives: 3826 Acres
No 3308, Hubert dit Tabeau's Representatives.
COMMON FIELD.
CUL DE SAC
Road to St. Louis
1½ ± about 30 arpens.
A
No 363
August Chouteau
No 8125
St. Louis Common
Joseph Motard
No 2310 M. Hemmerle et al
Levi B. Clark
Page 28


T 45 N. . R 7 E. 5th pl Mn
No 2037: Charles Gratiot.
No 3307, Joachim Roy's Legal Representatives: 38.26 Acres
No 3308, Hubert dit Tabeau's Representatives.
COMMON FIELD.
CUL DE SAC
N
W
E
S
Variation, 8° E
Scale of 10 chains to an inch
August Chouteau
Joseph Motard
St. Louis Common
A


8 Plat of Chouteau Mill Tract
De Auguste Chouteau
Vacante
Vacante
1890 Arps 3 Pes
Terre Montense et generalement penboisée
Mlle Marie Nicol
Les Bois 244 A. 30 Pes
Antt Soulard
204 A. 48 Pes
Antt Soulard
Verger
Etan
Destillerie
Tour du S.O.
Chemin
Rio Misisipy
Ville de St Louis
Fort St Louis
Antt Soulard
N 370 Levi R. vs Clark
M. Hemmerle et al Page 74

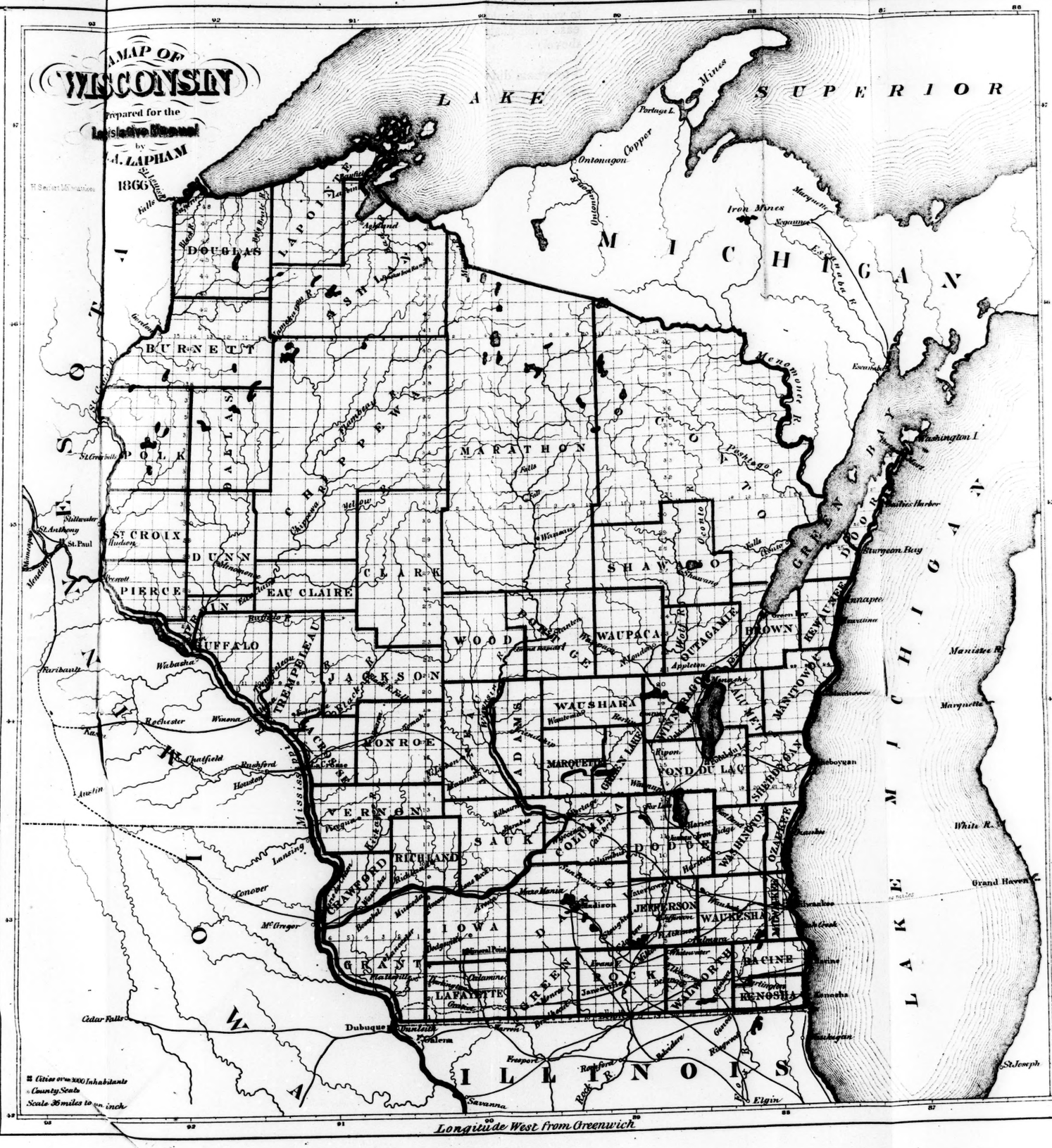
416,- Coutter et al. vs. Milwaukee & Minn. R.R.
and
417,- Milwaukee & Minn. R.R. vs. Milwaukee & St Paul R.R.
page 231,

## POPULATION, 1865.

### CITIES, &c.

| | |
|---|---|
| Milwaukee | 55 641 |
| Fond du Lac | 11 031 |
| Oshkosh | 9 346 |
| Madison | 9 191 |
| Racine | 8 041 |
| Janesville | 7 627 |
| Watertown | 6 682 |
| La Crosse | 5 037 |
| Sheboygan | 4 189 |
| Beloit | 4 133 |
| Kenosha | 4 056 |
| Whitewater* | 4 013 |
| Dodgeville* | 3 622 |
| Prairie du Chien | 3 556 |
| Manitowoc | 3 398 |
| Portage City | 3 379 |
| Mequon* | 3 270 |
| Beaver Dam | 2 939 |
| Potosi* | 2 754 |
| Shullsburg* | 2 718 |
| Green Bay | 2 712 |
| Hazel Green* | 2 686 |
| Appleton | 2 665 |
| Berlin | 2 554 |
| Monroe | 2 534 |
| Mineral Point | 2 511 |
| Columbus* | 2 496 |
| Menasha* | 2 467 |
| Ripon | 2 452 |
| Neenah* | 2 309 |
| Omro* | 2 309 |
| Baraboo* | 2 259 |
| Lowell* | 2 235 |
| Port Washington* | 2 171 |
| Waukesha | 2 146 |
| Fox Lake* | 2 065 |
| Platteville | 2 061 |
| Waupun | 1 927 |
| Sparta | 1 897 |
| Hustisford* | 1 671 |
| Steven's Point | 1 659 |
| Viroqua* | 1 622 |
| Jefferson | 1 602 |
| Oconto | 1 600 |
| Waupaca* | 1 555 |
| Mazomanie* | 1 533 |
| Eau Claire* | 1 432 |
| Two Rivers | 1 306 |
| Lisbon* | 1 270 |
| Grand Rapids* | 1 269 |
| Horicon | 1 196 |
| Boscobel | 1 127 |
| Elkhorn | 1 108 |
| Prescott* | 1 061 |
| Chippewa Falls* | 1 003 |
| Oconomowoc | 948 |
| De Pere | 885 |
| Lancaster | 853 |

*Including the Towns.




## POPULATION, 1865.

### COUNTIES.

| | |
|---|---|
| Adams | 5 698 |
| Ashland | 256 |
| Brown | 15 282 |
| Buffalo | 6 776 |
| Burnett | 171 |
| Calumet | 8 638 |
| Chippewa | 3 278 |
| Clark | 1 011 |
| Columbia | 26 112 |
| Crawford | 11 011 |
| Dane | 50 192 |
| Dallas | 79 |
| Dodge | 46 841 |
| Door | 3 098 |
| Douglas | 532 |
| Dunn | 5 170 |
| Eau Claire | 5 281 |
| Fond du Lac | 42 029 |
| Grant | 33 618 |
| Green | 20 646 |
| Green Lake | 12 596 |
| Iowa | 20 657 |
| Jackson | 5 631 |
| Jefferson | 30 597 |
| Juneau | 10 013 |
| Kewaunee | 7 039 |
| Kenosha | 12 676 |
| La Crosse | 14 834 |
| La Fayette | 20 358 |
| La Pointe | 269 |
| Manitowoc | 26 762 |
| Marathon | 3 678 |
| Marquette | 7 327 |
| Milwaukee | 72 320 |
| Monroe | 11 652 |
| Oconto | 4 858 |
| Outagamie | 11 842 |
| Ozaukee | 14 882 |
| Pepin | 3 002 |
| Pierce | 6 324 |
| Polk | 1 677 |
| Portage | 8 145 |
| Racine | 22 884 |
| Richland | 12 186 |
| Rock | 36 033 |
| St. Croix | 7 255 |
| Sauk | 20 154 |
| Shawano | 1 369 |
| Sheboygan | 27 671 |
| Trempeleau | 5 199 |
| Vernon | 13 644 |
| Walworth | 25 773 |
| Washington | 24 019 |
| Waukesha | 27 029 |
| Waupaca | 11 208 |
| Waushara | 9 002 |
| Winnebago | 29 767 |
| Wood | 2 965 |
| | 869 016 |